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SPANISH IN THE COURTROOMS OF PUERTO RICO, H.R. 5563

HEARING

BEFORE THE

SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 5563

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SPANISH IN THE COURTROOMS OF PUERTO RICO, H.R. 5563

MONDAY, MAY 19, 1980

U.S. SENATE,
SUBCOMMITTEE ON IMPROVEMENTS
IN JUDICIAL MACHINERY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:25 a.m., in room 1224, Dirksen Senate Office Building, Senator Dennis DeConcini (chairman of the subcommittee) presiding.

Staff present: Romano Romani, staff director; Robert E. Feidler, counsel; Ondre Williams, staff assistant; Pamela I. Phillips, chief clerk; and Phyllis Gibbs, secretary.

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DECONCINI. Today we will have hearings on H.R. 5563, the Puerto Rico Translation Act, a bill which permits the use of the Spanish language in proceedings in the U.S. district court of Puerto Rico upon request of the parties.

The idea is not a new one; in fact, a proposal similar to H.R. 5563 was adopted by the Senate in the 95th Congress as part of the Court Interpreters Act, but was dropped by the House pending further evaluation. Since that time the appropriate House subcommittee under the chairmanship of Don Edwards, with significant input from Congressmen Seiberling and Butler, has conducted hearings on the subject and it is essentially their product that we have before us today.

Comment we have received on the bill is mixed. Of crucial concern to the subcommittee is the opinion of the several judges who will have to live with whatever we legislate. Major concerns have been brought to the subcommittee's attention which I hope our distinguished witnesses will address. These include:

Should a U.S. court as a matter of policy conduct its proceedings in any language other than English?

Is there a need for the use of Spanish in the Puerto Rican court?

Can the monetary costs involved be justified by the expectation of a higher quality of justice? and

Are the provisions of H.R. 5563 administratively feasible?

I have no doubt that our fine witnesses here this morning will be able to clarify these issues for the subcommittee.

Our first witness will be Congressman John Seiberling, sitting in for Chairman Edwards, who is unavoidably absent while assisting Chairman Rodino with hearings in New Jersey.

We welcome you.

Any statement you care to have put in the record you may insert. We appreciate your coming this morning with the busy schedule I know you gentlemen have.

STATEMENT OF REPRESENTATIVE SEIBERLING

Mr. SEIBERLING. Thank you, Mr. Chairman. It is a pleasure to be here. This is an important matter.

Let me say to Congressman Butler, who is also testifying, we are indebted to him for taking the initiative in insuring that our subcommittee actually went to Puerto Rico and held an in-depth set of hearings on this subject. The result, I think, is much more appropriate legislation in terms of the language and some of the features that we have introduced into it.

I would like quickly to read through my prepared statement, if I may, in view of the considerable interest in this subject. I think it is important that the news media get the opportunity at least to see the points we think are vital.

During this and the preceding Congress, the House Judiciary Subcommittee on Civil and Constitutional Rights, of which I am a member, conducted 5 days of hearings, both in Washington, D.C., and in Puerto Rico, to address the problems posed by the current English language requirement in the Federal District Court of Puerto Rico. Those hearings convinced the subcommittee members that changes in that Federal district court were not only appropriate but, in fact, necessary.

I will not go into the summary of what is in the bill inasmuch as you have it before you. Since my full statement can be included in the record, I trust that will be set forth.

Senator DECONCINI. We will include it.

Mr. SEIBERLING. One point I would like to emphasize strongly is that we intended to use the waiver provision sparingly, and then only for a limited period of time because we did not want to create an exception which would swallow up the rule. The waiver provision I refer to concerns cases where the court feels that the interest of justice would require it. In such cases they may apply to the Federal Judicial Council for a waiver of the requirements that the proceeding be conducted in the Spanish language where criminal defendants are involved or where both parties require it. The committee report spells out a series of situations in which such waiver would be appropriate, and we intend that it not be expanded and used to excess.

If there is disagreement among the parties in a civil case as to which language to use, then the court would decide whether it is in the interest of justice to proceed in Spanish rather than in English. Again, the determination as to the specific set of circumstances leading to that finding is left to the discretion of the court.

It is anticipated, however, that in making such a determination the the court will consider factors such as the complexity of cases, likelihood of appeal, likelihood of emergency relief being sought, the potential for a voluminous number of exhibits, their technical nature, and the state of the appeals docket.

If any or all of these factors are determined by the court to pose a roadblock to the speedy disposition of the case or to the preservation of the rights of speedy appeal, should that need arise, it is then foreseeable that the court would choose to proceed in English.

In the final analysis, of course, the district court is in the best position to determine how best to apply the concept of "the interest of justice" in this situation since they are called upon to make similar judgments on a daily basis.

Again, and perhaps this is an appropriate time to bring this up, I feel that the estimate of the Congressional Budget Office that this bill would cost an additional $2 million a year, fails to take into account the fact that in many civil cases the court will use this power to decide that they do not want to have the case tried in Spanish. That would eliminate some of the expense forecast by the Congressional Budget Office.

While I am on the subject, I might as well add that we feel the Congressional Budget Office estimate is also misleading in that it fails to take into account the fact that today, when trials are conducted in English, very extensive use of interpreters is required inasmuch as the overwhelmingly large majority of the people of Puerto Rico do not speak English with sufficient fluency to be able to have a trial conducted in English. There is, then, a great deal of translating done at the trial level rather than in the appellate level. That is something, we think, that is an offsetting cost.

The provision is, of course, that appellate court records are to be entirely in English unless the appellate courts direct otherwise. That is the principal concern with this bill because of the additional costs. However, I think we need to focus on the fact that the courts are run for the benefit of the public and the litigants and not for their own convenience.

We heard the judges of the district court when we were in Puerto Rico make this point. Yet it boiled down in our minds to what I am afraid is a rather typical situation with the Federal courts; namely, that they sometimes administer the courts for their convenience predominantly rather than for the convenience of the public.

While the convenience of the court is also an important fact in the terms of administration or justice, where the convenience of the court is actually not compatible with the administration of justice—as it is not where you have the parties all speaking in Spanish and being required to go through the burden of dealing with a court proceeding in English—we feel that a bill requiring that it be in Spanish, where the interest of justice generally is compatible, is not too great a burden on the court.

I guess I am skipping around from my prepared statement. Perhaps, Mr. Chairman, it would be well to put the entire statement in the record at this point and have you ask me questions. I shall try to answer them to the best of my ability. I do feel this is a very important matter politically. There is tremendous interest shown by the tremendous attendance at this hearing today, the audience and the news media. That in itself is a good example.

The fact that there was a threat, which happily appeared to be an idle one, is rather interesting because the people who do not want to see Puerto Rico remain a prosperous and a peaceful member of the U.S. association of people are those who are against this bill. This bill

reaffirms to the people of Puerto Rico that their Spanish culture and their Spanish language and their rights are paramount in the administration of justice in Puerto Rico.

I think we can do no less than adopt some piece of legislation of this sort. I think perhaps it can be improved, and no doubt the Senators, when they finish contemplating it, may come up with improvements.

Thank you very much.

Senator DECONCINI. Thank you very much. Let me ask just a couple of questions.

In your deliberations in the House subcommittee, did you take a look at the feasibility of doing this only in cases involving criminal matters?

Mr. SEIBERLING. Yes; we did, Mr. Chairman.

Senator DECONCINI. What was your conclusion?

Mr. SEIBERLING. That seems pretty fundamental in view of the importance of having the defendant, for example, being able clearly to comprehend the testimony before him and having it done with all the nuances of his own language. That seems elementary.

However, where both parties agree to conduct the matter in Spanish, then it seemed to us the interest of justice would be better served. We provide an escape clause where the court, if circumstances require, can get a waiver of that.

Senator DECONCINI. Both in the criminal as well as civil cases insofar as the waiver applies?

Mr. SEIBERLING. Yes, sir.

Senator DECONCINI. In the area of use of Spanish in civil cases, was there consideration given to letting this be part of the cost of litigation to be borne by the parties?

Mr. SEIBERLING. Yes; consideration was given to that. We rejected that on the ground that that might have an effect to deter the parties in exercising their rights.

Senator DECONCINI. What about the thought, in civil cases, of having the parties petition the court to have this be implemented and letting the judge make the decision only as to whether justice would be better served? Was that considered?

Mr. SEIBERLING. Yes; we considered all the angles. Frankly, I do not recall the precise grounds on which we rejected that. Perhaps Congressman Butler can answer that question.

Senator DECONCINI. Thank you.

Mr. SEIBERLING. If I may, Mr. Chairman, make one other point because you might hear this argument made.

The argument was made, when we met in Puerto Rico for our hearings there, on the part of the judges of the district court, that having the proceedings of this court conducted in Spanish in large part would isolate the district court of Puerto Rico from all of the other U.S. district courts.

Frankly, we thought that was an argument that was a "make-weight" argument and did not even deserve consideration upon analysis. It fell of its own weight.

The important point I would stress, however, is that we do not want to isolate the people of Puerto Rico. We want them to feel they are a full-fledged part of the United States as long as they choose that association. If they should choose some other association, that is their decision. However, at present they have not.

Administratively we could not see any validity to that argument with appeals all required to be conducted in English. We could not see how that would isolate this court.

Senator DECONCINI. Any appeal would have to be translated back into English in order to be filed?

Mr. SEIBERLING. That is right.

Senator DECONCINI. Was there any testimony as to cost savings in having simultaneous interpretations during the court hearings into English in order to save the cost of translating later?

Mr. SEIBERLING. Well, there is definitely a cost saving when you do not have to have interpreters at the district court level. Whether there would be savings in terms of the record is difficult to say. There probably would be a net additional cost because of the fact that you have a record being translated.

Senator DECONCINI. I take it from your reference in your statement regarding the cost that it was the determination of the full Judiciary Committee in the House, and obviously the majority of members there in passing this bill, that the cost, whatever it may be, estimated at $2.5 million, was certainly miniscule considering the benefit of the quality of justice for the people of Puerto Rico?

Mr. SEIBERLING. That is certainly my view, Mr. Chairman. The costs by 1985 are estimated to be $2 million. That is such a small part of the total cost of the administration of just the Federal court system alone that if it produces greater tranquility in Puerto Rico this seems to us largely to be offset by the elimination of other costs which are entailed where there is civil unrest.

While it is impossible to equate those two, it seems to us that when you add that to the requirement of justice and due process it is pretty difficult for a lawyer to come out any other way.

Senator DECONCINI. Congressman, thank you for your time this morning. You have been very helpful.

Mr. SEIBERLING. Thank you.

[The prepared statement of Representative Seiberling follows:]

PREPARED STATEMENT OF REPRESENTATIVE JOHN SEIBERLING

Mr. Chairman, during the 95th and 96th Congresses, the Judiciary Subcommittee on Civil and Constitutional Rights, of which I am a member, conducted 5 days of hearings, both in Washington, D.C., and in Puerto Rico, to address the problems posed by the current English language requirement in the Federal District Court of Puerto Rico. Those hearings convinced the subcommittee members that changes in that Federal district court were not only appropriate but, in fact, necessary.

Under the provisions of H.R. 5563, as passed by the House, initial pleadings in the District Court of Puerto Rico would be in English or in Spanish. Subsequent pleadings and proceedings would continue to be in English unless a criminal defendant or all parties in a civil case request that they be conducted in Spanish. A waiver of the requirement that Spanish be used in such cases may be granted if a situation of an emergency or unforeseen nature arises which would impose an undue burden on the District Court of Puerto Rico. The waiver provision was added to the legislation at the request of the former chief judge of the Federal District Court of Puerto Rico and in recognition of the fact that, in some very limited situations, of short duration, this Spanish-language requirement may actually frustrate or impede the administration of justice in the Federal District Court of Puerto Rico. The situations which are envisioned as giving rise to waiver applications are those of an emergency or unforeseen nature which would impose an undue burden on that court.

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Mass violations of certain laws leading to the filing of a substantial number of criminal cases resulting from one or a related series of transactions or events and large multidefendant or multiparty cases are the specific type of cases which the committee had in mind when it agreed to include this provision in the legislation. A point that cannot be emphasized strongly enough is that it is intended that this waiver provision be used sparingly and then only for a limited period of time. It is not the committee's intent to create an exception which will swallow up the rule.

If there is disagreement among the parties in a civil case as to which language to use, then the court decides whether it is "in the interest of justice" to proceed in Spanish rather than in English. The determination of what specific set of circumstances will lead to a finding that it is "in the interest of justice" to proceed in Spanish, in this situation, is left to the discretion of the court. It is anticipated, however, that in making such a determination, the court will consider factors such as the complexity of the cases, the likelihood of appeal, the likelihood of emergency relief being sought, the potential for a voluminous number of exhibits, together with their technical nature, and the state of the appeal docket. If any or all of these factors are determined by the court to pose a roadblock to the speedy disposition of the case or to the preservation of the right to speedy appeal, should that need arise, it is then foreseeable that the court would choose to proceed in English. In the final analysis, of course, the district court is in the best position to determine how best to apply the concept of "the interest of justice" in this situation since they are called upon to make similar judgments on a daily basis.

The bill further provides that the district court's written orders and decisions shall be in the language used in the trial or proceeding to which it relates. When the legislation was originally introduced, written orders and decisions were required to be in both English and Spanish. This provision was changed to avoid unnecessary and costly duplication.

Appellate court records are to be entirely in English unless the appellate court directs otherwise. It is understood that the District Court in Puerto Rico will have to hire some additional personnel to administer this legislation. The actual number and type of personnel needed and the estimated costs raised by this legislation depend, to a large extent, upon the assumptions made regarding the number of cases, especially complex civil cases, which will be conducted in Spanish, together with the volume and the technical nature of the appellate record to be translated.

It is our strong belief that most complex civil cases which would require lengthy time-consuming, and technical translations into English for appellate purposes will, in fact, be conducted in English. Therefore, it is anticipated that the number of civil cases which will require translations for appellate purposes will be significantly less than that estimated by the Congressional Budget Office and the Administrative Office of the U.S. Courts. As a result, the Administrative Office's estimate that the U.S. District Court for the District of Puerto Rico will need over 50 new translators should be closely reviewed. In any event, while a pool of translators or interpreter-translators and other support personnel will have to be hired from the outset, it is anticipated that experience over a period of time will better dictate the actual number of such individuals who will be needed to carry out the provisions of this legislation.

H.R. 5563 also provides that individuals who can speak, understand, read, and write Spanish may qualify for service on a grand or petit jury in the Federal District Court of Puerto Rico if the trial or proceeding for which they are picked is to be conducted in Spanish. Since Puerto Rico is and historically has been primarily Spanish-speaking, the current English language prerequisite for service on jury panels raises serious questions as to whether Federal court defendants are now tried by a jury which truly represents a cross-section of the community. In fact, testimony before our subcommittee indicated that, at least, 50 percent of the population of the Commonwealth is automatically excluded from service on such panels.

Mr. Chairman, the Subcommittee on Civil and Constitutional Rights received statements from 21 different witnesses, 16 of whom testified during our 3 days of hearings regarding the proposed changes. Of the 21 statements received, only the Judicial Council for the First Circuit Court of Appeals and the judges from the Federal District Court of Puerto Rico expressed reservations about the proposed changes. It should be noted, however, that the former Chief Judge of the U.S. District Court in Puerto Rico, Jose Toledo, did testify in support of the use of Spanish in that court in criminal cases. The primary concerns cited by those expressing reservations are that the proposed changes may result in additional

delays and expense in the preparation of the appellate record and that there will be a need for additional personnel and facilities for that district court in order to conduct the necessary translations.

It is believed that H.R. 5563, which has been carefully revised since it was originally introduced, reasonably addresses these administrative concerns. Furthermore, the committee report contains language addressing many of the specific concerns raised by the judges.

Support for the proposed changes was received from, among others: political leaders of Puerto Rico, including the resident Commissioner, Baltasar Corrada, and the Governor of Puerto Rico, both of whom will be testifying here today; from the U.S. Department of Justice and the most recent U.S. attorney for that district court; from the two bankruptcy court judges from that district court; from representatives of their State and Federal bar associations; and from the deans of the three law schools in Puerto Rico. The American Bar Association also supports this bill.

The changes proposed in H.R. 5563 are in recognition of the unique circumstances which exist within the jurisdiction of the District of Puerto Rico. It is the exception, rather than the rule, for another district court to have a similar situation where the judge, defendants or parties, prosecutor, defense counsel, witnesses, and court personnel all have in common a primary language other than English. The language barrier problems faced by defendants, litigants, or witnesses in other Federal districts were addressed by the 95th Congress when the Court Interpreters Act was passed and signed into law. That legislation requires that court interpreters be provided in Federal district courts whenever an individual's comprehension or communication capability may be inhibited because such individual speaks a language other than the English language or has a hearing impairment.

The fact of the matter is that Spanish is the mother tongue of Puerto Ricans and, thus, will continue to be the principal vehicle of communication there even though English has and will continue to gain increasing importance in every aspect of life.

I would conclude, Mr. Chairman, by emphasizing that this issue has been critically and thoroughly examined. H.R. 5563 has received bipartisan support in the House.

During the 94th and 95th Congresses, the Senate passed legislation which contained provisions proposing similar changes in the Federal District Court in Puerto Rico. Senator Howard Baker (R.-Tenn.) has introduced legislation this Congress (S. 1939) which includes provisions similar to those in H.R. 5563.

The proposed changes contained in the House-passed bill will give more viability to the concepts of due process and the administration of justice for our fellow citizens in Puerto Rico.

Senator DeConcini. We will now hear from Congressman Caldwell Butler.

Thank you for being with us today, Congressman. We look forward to hearing from you.

Your full statement may appear in the record if you like, or you may proceed in whatever manner you wish.

STATEMENT OF REPRESENTATIVE BUTLER, ACCOMPANIED BY HELEN C. GONZALES, HOUSE JUDICIARY COUNSEL

Mr. Butler. I will ask you to file my full statement at the appropriate place.

Senator DeConcini. Very well.

Mr. Butler. I am accompanied by my lawyer, Helen Gonzales, on our committee staff.

I am supportive of this legislation. That is the primary purpose for my presence. I do not think I can give more eloquent testimony having come back from my district in order to appear on Monday morning at 9 o'clock. I would have the record note that my presence is a sign of my support.

I felt this bill was important and that we consider it more carefully than our committee had, so there was deferred action. We went to Puerto Rico and had a look into the matter in some detail I am satisfied that this is the appropriate thing to do.

Mr. BUTLER. Since 1917, when Puerto Ricans became U.S. citizens, there has been a growing acceptance and recognition of the important role of the Federal District Court in Puerto Rico. However, the exclusive use of English by that court continues to be a matter of great concern in Puerto Rico.

Under the bill, as passed by the House, initial pleadings may be filed in either English or Spanish. Subsequent pleadings and proceedings shall be in English unless the three-pronged mechanism set forth in the bill is triggered.

I will not touch on this further except that I will emphasize what Congressman Seiberling said as to the importance of the court, to meet the convenience and interest of the parties, and not the interest and convenience of the court. I would not be as generous as he in suggesting that the convenience of the court should be a consideration at all. I think the availability of the court is the major consideration. and we lose sight of that fact and have a tendency to give disproportionate emphasis to the value of the court's testimony because of the prestigious position they occupy.

It is difficult for the individuals and the litigants themselves to be representing testimony of this nature, but it is most important that we bear in mind that should be the major consideration.

Of course, the provision of this legislation is aimed at a unique situation existing only in Puerto Rico. I will emphasize that it seems to me that the decision as to whether we will have a bilingual court was made when Puerto Ricans were made citizens of the United States. That was a decision that was made at that time when we added the Commonwealth in which Spanish was the mother tongue. We owe those citizens the rights in their courts that we give other U.S. citizens. Therefore, the exclusive use of English in that court results in the extensive use of court interpreters, particularly in criminal cases. This, in turn, causes lengthy delays in the proceedings of that court, with some proceedings taking 30 to 50 percent additional time to complete.

It is important to note here that the judges, prosecutors, defense counsel, and the overwhelming majority of court personnel are, primarily, Spanish speaking and, secondarily, English speaking. Most defendants, parties, and witnesses, especially in criminal cases, are either primarily or solely Spanish speaking.

Therefore, access to the Federal District Court in Puerto Rico may be more critical to criminal defendants or civil litigants if the court's pleadings and proceedings are conducted in Spanish. Concurrently, the right to speedy disposition of one's case in that court also gains more significance with the Spanish language option.

Both of these factors were alluded to by the two bankruptcy court judges in Puerto Rico who testified in support of the policy expressed in the earlier version of this legislation.

We observed the bankruptcy court in business while we were there. I expect they are getting busier at the moment. At that time the bankruptcy court had a direct appeal to the district court. Their proceedings were conducted substantially, almost uniformly, in the

Spanish language. They had to do it in order to move the proceedings along.

When it was appealed to the Federal district court in those days English got involved in it. I thought it worked pretty well, and it was the conclusion of the judges this was the best way for their bankruptcy courts to function. I mention, therefore, we have a track record and experience of the Federal court proceeding in the Spanish language.

Based on the generally accepted estimate that approximately 75 percent of criminal defendants currently require the use of court interpreters, it is anticipated that Spanish will most often be the preferred language in criminal cases. It is further anticipated that in civil cases the preferred language will, in the majority of cases, be determined through a consensus of the parties and that English will be the preferred language. This is particularly true with regard to complex civil cases which are expected to be fairly complex, lengthy, and/or technical in nature or cases where emergency relief is likely to be sought; for example, labor disputes.

The parties and attorneys are forewarned that if such cases are conducted in Spanish and then appealed, translation of the record may be time consuming and may thereby jeopardize their right to a speedy appeal, especially if there already exists a backlog in getting transcripts to the First Circuit Court of Appeals.

Having been made aware of this fact, the parties—and not the court—must decide whether or not to proceed with the use of Spanish except in those civil cases where the parties cannot agree on which language to request.

It is anticipated that any necessary translation of court documents and records for appellate purposes will be performed primarily or solely by personnel in the office of the U.S. District Court for the District of Puerto Rico.

The individuals who currently serve as court interpreters in that court also translate, into English, Spanish-language documents which are submitted to that court.

Testimony before us indicates there is a fluency and that they are qualified not only as interpreters but they are trained as translators. I do not anticipate, based on our testimony of Judge Toledo, who is no longer living, I understand, that this is not a major problem.

Under the provisions of H.R. 5563, potential service on grand and petit juries would also be open to all individuals who are competent in the Spanish language if the trial or proceeding for which they are called is to be conducted in Spanish. This provision is particularly important in light of testimony the subcommittee received that, at least, 50 percent of the population of the Commonwealth is automatically excluded from potential jury service due to the current English language prerequisite.

I strongly believe that H.R. 5563 represents a long overdue course of action which will assure that the concepts of fairness and due process become more significant for the people of Puerto Rico.

Thank you, Mr. Chairman, for the opportunity to present this testimony today.

Senator DECONCINI. The balance of your statement will be inserted in the record.

Mr. BUTLER. Thank you.

Senator DECONCINI. I appreciate your testimony, Congressman Butler.

While realizing your concern with regard to this legislation and that it is of great importance to this committee, you obviously have given a great deal of thought to the cost involved. The committee has to address that problem.

How do you feel about a piecemeal approach to this, that is, first striking out and handling the criminal aspects for perhaps a trial period and then proceeding to civil cases, or at least doing some of the civil cases on a trial basis to see the kinds of results we get.

I have no trouble at all with regard to the criminal aspects. I think it is very, very necessary. I am concerned only with the cost of doing it all simultaneously.

Have you any thoughts or comments?

Mr. BUTLER. In the first place, it always has been my observation that when changes of this sort are made within the court system they begin to be made when the deadline becomes apparent. Therefore, I think it is important to establish dates when we expect these things to take place, even if we phase it in.

I felt, when we were considering this legislation, that 18 months was every bit adequate to bring in both the criminal and civil. The only factor which concerns me is the cost factor. If it makes it more palatable and easier for passage, I would not feel strongly that a gradual phasing in from the criminal first and then to the civil would offend me greatly. I do not think it is necessary except from the cost point of view. Mechanically, it can be worked out.

I do think, however, that the significant thing is the criminal case in terms of more cosmetic or symbolic effect.

If you talk about a court system and access to justice, logically I can see no distinction between civil and criminal.

I have danced around the question, not deliberately.

Senator DECONCINI. I understand.

Mr. BUTLER. Generally I wanted to share my thoughts with you.

Senator DECONCINI. One other question, Congressman. We will hear testimony that there is some problem of translating written Spanish, typed-up transcripts back into English for the purpose of appeals.

Did you have any testimony which verified that could be done with validity and accuracy without missing some of the important points from the transcript which would be necessary for appeal purposes?

Mr. BUTLER. I am having trouble recalling whether that is testimony or informal discussion. However, when we were in Puerto Rico we talked about this aspect of it. I was led to believe that that was not insurmountable and was not a major problem.

I would like to see the day, and the day should come soon, when the appellate level is bilingual in this regard. It seems to me in this legislation there is discretion. If the appellate level wants it to come forward in Spanish, it seems to me that is what we should strive for in our appointments hereafter.

I do not expect to be consulted on appointments for the circuit judges in the first circuit, or any other circuit if the truth be known, but I do think that is the direction in which we should be going. The

sooner we get started on this, with the passage of time we will not have these translation problems. We will develop administratively as well as on a decision level; that is, the judges having an understanding of Spanish so it will not require all this back and forth.

Senator DECONCINI. Did you give consideration in the House hearings and in your full committee deliberation to the matter regarding the reaction of States or geographical areas in this country having large Hispanic populations? Will the Hispanic bar, population and citizens in Texas, New Mexico, Arizona, and California want those kinds of considerations for cases in their district courts?

Mr. BUTLER. If you will remember, Mr. Chairman, this legislation came to us first as a vehicle along with the Court Interpreters Act. That was a consideration which brought us to this.

I do not recall very much discussion. I was not a member of the subcommittee when the bill came out of the subcommittee. I do not recall much discussion of the impact it would have in creating a demand in other areas.

However, I have an opinion on that subject if you are interested in hearing that.

Senator DECONCINI. Yes, I would.

Mr. BUTLER. It is my view that we have two different problems. However, when Puerto Rico became part of the United States in its present status, we had that culture, we had that language there. We did not place any conditions on their being part of the United States. Our system had to absorb them. I think we failed them in not earlier making available Spanish-speaking Federal district courts.

I do not think we have that same obligation to people who moved into the United States and who do not quickly assimilate the English language. We have met our requirements in that regard with the Court Interpreters Act and I am very comfortable with this unique situation for Puerto Rico.

Senator DECONCINI. I agree with that opinion.

Thank you very much, Congressman. We appreciate your appearance here today.

Mr. BUTLER. Thank you. It was nice to be here.

Senator DECONCINI. Your full statement will be included at this point in the transcript.

[The prepared statement of Representative Butler follows:]

PREPARED STATEMENT OF REPRESENTATIVE CALDWELL BUTLER

H.R. 5563, as passed by the House, would permit the use of Spanish in specified pleadings and proceedings of the Federal District Court of Puerto Rico.

The changes proposed in H.R. 5563 were first considered during the 95th Congress when I was a member of the House Judiciary Subcommittee on Civil and Constitutional Rights. While I initially had some hesitancy in going forward with such changes, discussions which the subcommittee had in Puerto Rico with numerous individuals involved with the Federal district court, as well as with the local, State court system in Puerto Rico, satisfied me that the policy set forth in this legislation does indeed set a wise course for the people of Puerto Rico.

The Commonwealth of Puerto Rico has a population of approximately 4 million people. The first civil government was established there in 1900 by the Foraker Act, which, simultaneously, created the Federal District Court for the District of Puerto Rico. The Federal District Court in Puerto Rico, whose establishment was initially objected to by most people there, including the Puerto Rican legal, judicial and political community, has, from its inception, regarded Spanish as a foreign language even though Spanish is the mother tongue of the people of Puerto Rico.

Since 1917, when Puerto Ricans became U.S. citizens, there has been a growing acceptance and recognition of the important role of the Federal District Court in Puerto Rico. However, the exclusive use of English by that court continues to be a matter of great concern in Puerto Rico.

Under the bill, as passed by the House, initial pleadings may be filed in either English or Spanish. Subsequent pleadings and proceedings shall be in English unless the three-pronged mechanism set forth in the bill is triggered.

This mechanism provides that Spanish will be used at the request of a defendant in a criminal case or by agreement of all parties to a civil case. If the parties in a civil case cannot agree on which language to use in subsequent pleadings and proceedings, then the court determines whether it is "in the interest of justice" to proceed in Spanish rather than in English.

This mechanism, together with the waiver provision in the bill, gives the guidance to the Federal district court judges in Puerto Rico which they requested of the subcommittee during our deliberations while at the same time allowing the court to maintain the discretion it needs to effectively and efficiently administer justice in its court.

Our overriding concern in considering any proposed changes in the pleadings and proceedings of the Federal District Court of Puerto Rico must be the convenience and the interests of the parties and not the convenience and the interest of the court or the attorneys It is neither fair nor just that the citizens of Puerto Rico are required to use a foriegn language to gain access to their own Federal court.

The provisions of H.R. 5563 are aimed at a unique situation which exists only in the District Court of Puerto Rico. That court, unlike other Federal district courts, sits in a jurisdiction where Spanish has historically been the mother tongue of the overwhelming majority of the population. (Therefore), the exclusive, use of English in that court results in the extensive use of court interpreters particularly in criminal cases. This, in turn, causes lengthy delays in the proceedings of that court, with some proceedings taking 30 to 50 percent additional time to complete.

It is important to note here that the judges, prosecutors, defense counsel, and the overwhelming majority of court personnel are, primarily, Spanish speaking and, secondarily, English speaking. Most defendants, parties, and witnesses, especially in criminal cases, are either primarily or solely Spanish speaking.

Therefore, access to the Federal District Court in Puerto Rico may be more critical to criminal defendants or civil litigants if the court's pleadings and proceedings are conducted in Spanish. Concurrently, the right to speedy disposition of one's case in that court also gains more significance with the Spanish language option.

Both of these factors were alluded to by the two bankruptcy court judges in Puerto Rico who testified in support of the policy expressed in the earlier version of this legislation. Their support, in this regard, was based on their own experience of permitting the use of Spanish in their court.

Based on the generally accepted estimate that approximately 75 percent of criminal defendants currently require the use of court interpreters. it is anticipated that Spanish will most often be the preferred language in criminal cases. It is further anticipated that in civil cases the preferred language will, in the majority of cases, be determined through a consensus of the parties and that English will be the preferred language. This is particularly true with regard to complex civil cases which are expected to be fairly complex, lengthy, and/or technical in nature or cases where emergency relief is likely to be sought (e.g., labor disputes).

The parties and attorneys are forewarned that if such cases are conducted in Spanish and then appealed, translation of the record may be time consuming and may thereby jeopardize their right to a speedy appeal, especially if there already exists a backlog in getting transcripts to the First Circuit Court of Appeals.

Having been made aware of this fact, the parties—and not the court—must decide whether or not to proceed with the use of Spanish except in those civil cases where the parties cannot agree on which language to request.

It is anticipated that any necessary translation of court documents and records for appellate purposes will be performed primarily or solely by personnel in the office of the U.S. District Court for the District of Puerto Rico.

The individuals who currently serve as court interpreters in that court also translate, into English, Spanish-language documents which are submitted to that court. According to the most recent chief judge of that district court, Jose V. Toledo, in order to assure that such individuals are qualified to perform transla-

tions, as well as in-court interpretations, the entrance examination for those positions is geared to determine their proficiency in both skills. Most of the individuals who are serving—or have served—as court interpreters are graduates of the University of Puerto Rico's Graduate School of Translation, or candidates for a master's degree pending only completion and submission of their thesis. Therefore, even though such individuals are hired primarily as interpreters, academically they have been trained as translators. And, according to the most recent chief judge of that court, who was bilingual, those individuals are "very skilled" as translators. In addition, the interpreters consult with the attorneys of the court when in doubt concerning a translation.

Under the provisions of H.R. 5563, potential service on grand and petit juries would also be open to all individuals who are competent in the Spanish language if the trial or proceeding for which they are called is to be conducted in Spanish. This provision is particularly important in light of testimony the subcommittee received that, at least, 50 percent of the population of the Commonwealth is automatically excluded from potential jury service due to the current English-language prerequisite.

I strongly believe that H.R. 5563 represents a long, overdue course of action which will assure that the concepts of fairness and due process become more significant for the people of Puerto Rico.

Thank you, Mr. Chairman, for the opportunity to present this testimony today.

Senator DECONCINI. Next we will hear from Governor of Puerto Rico, the Honorable Romero-Barcelo.

Governor, you may proceed in any manner you wish.

STATEMENT OF HON. CARLOS ROMERO-BARCELO, GOVERNOR OF PUERTO RICO

Governor ROMERO-BARCELO. Mr. Chairman, members of the sub committee, my name is Carlos Romero-Barcelo. I am the Governor of Puerto Rico, elected to a 4-year term on November 2, 1976.

I thank you for extending me this opportunity to present testimony concerning H.R. 5563, a bill to provide that certain judicial pleadings and proceedings in the U.S. District Court for the District of Puerto Rico may he conducted in the Spanish language.

This bill addresses the particular problems of the district court in Puerto Rico. The firmly established linguistic heritage of Puerto Rican society justifies implementation of the changes contemplated therein. Only in the District Court for Puerto Rico will you find that all the judges, magistrates, the marshals, prosecutors, the public defender, most of the lawyers, the clerk of the court, and staff are Spanish speaking. And what is more important, that court serves a Spanish-speaking community.

The Federal district court for Puerto Rico sits in a judicial district in which half the population does not speak English. Census figures for 1970 indicate that 57.3 percent of the people over the age of 10 living in Puerto Rico still are not able to speak English. These figures also show that 59.2 percent of the women and 75.2 percent of persons over 60 years of age speak little or no English. However, and despite these findings, Federal law still requires that all proceedings in the U.S. district court for Puerto Rico must be conducted in English.

I want to expand on something mentioned by Congressman Butler. Every naturalized citizen, before he becomes naturalized has to learn English and part of the naturalization proceedings is that he must learn the English language and take a test regarding his capability in speaking and understanding that lanugage. The situation in Puerto Rico was quite different.

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In 1917 Puerto Ricans were all made U.S. citizens by an act of Congress. At that time the Puerto Ricans were not asked what language they spoke. As a matter of fact, the language we spoke in Puerto Rico was and still is Spanish. Puerto Ricans have died in the First World War and in the Second World War, the Korean war and the Vietnam war defending our Nation.

I am sure that some died, perhaps, because they did not quite understand the orders given to them, unfortunately. Therefore, Puerto Ricans have more than shown their allegiance and their loyalty to the Nation. Even though we do speak Spanish as our mother tongue, the fact that English is required in the District Court of Puerto Rico for proceedings is an obstacle to adequate and fair proceedings.

Since language is the principal medium of communication in all legal proceedings, the ability to understand the language in which they are conducted is critical to the fairness of such proceedings. The existing procedure in the District Court for Puerto Rico is neither the most effective nor the most fair manner in which to carry out proceedings before the court. The appropriate remedy lies in the enactment of this piece of legislation, H.R. 5563. It will do much to guarantee that all persons appearing before the court will be adequately informed of what is happening. The existing situation not only creates hardships for parties and witnesses to civil and criminal proceedings, but also has the effect of summarily excluding half the population from jury duty.

I was a practicing attorney before I got involved in public life and politics. Most of my practice was in the Federal court.

When you have a client who does not speak English, you either must have somebody translating to him what is happening when you are carrying on proceedings in English, and the attorneys are questioning a witness who does speak English and you can ask him in English, or else he is completely disassociated from all that is happening. He does not understand.

As a result, you have to go to your client and explain to him what is happening. This is extremely unfair for a litigant, particularly for a person in a criminal trial.

Senator DECONCINI. In your practice in the court, was simultaneous interpretation ever used?

Governor ROMERO-BARCELO. Yes; they are used when the witness does not speak English, or says he does not speak English fluently enough and prefers being questioned in Spanish.

However, if the witness is fluent in English, then——

Senator DECONCINI. There is no translation?

Governor ROMERO-BARCELO. That is right.

Senator DECONCINI. Except what the attorney can give to the client right on the spot or during recesses?

Governor ROMERO-BARCELO. That is right. The translation is into English and not Spanish.

Senator DECONCINI. I see.

Governor ROMERO-BARCELO. Interpreters always translate into English.

Let me also add that this gives a definite advantage to the witness who is not telling the truth. If he decides to testify in Spanish and then the person speaks English, while it is translated into Spanish he

has time to think of an answer without looking hesitant before a jury, which is a definite advantage to the witness who is not telling the truth.

Senator DECONCINI. How about juries? Are members of the juries often not fluent in English?

Governor ROMERO-BARCELO. No; they have to be fluent in English. I will address that.

The jury members sometimes are not fluent in Spanish, however, so they will not hear the testimony in the original language. They will hear it but not understand it.

Senator DECONCINI. Thank you.

Governor ROMERO-BARCELO. The present language requirement in the Federal District Court for Puerto Rico inevitably produces juries which are not fully representative of the community as a whole. The English-language requirement for jury service results in jury panels which are more predominantly "white collar" than would be a cross section of the general population of the island. This contradicts the policy set forth in the Jury Selection and Service Act of 1968, Public Law 90–724, 28 U.S.C. 1861, which provides that: "All litigants in Federal courts entitled to trial by jury shall have the right to juries selected at random from a fair cross section of the community."

Furthermore, the present situation denies over half the population of Puerto Rico the right to serve on a Federal jury, and this also runs contrary to the purpose of the act, which provides in its policy statement that: "All citizens shall have the opportunity to be considered for service." If H.R. 5563 becomes law, the spirit of Public Law 90–724 will be upheld, since an individual who can speak, read, write, and understand Spanish may thereupon qualify for jury service if the trial or proceeding for which that person is selected is to be conducted in Spanish.

Congressman Don Edwards, chairman of the House Subcommittee on Civil and Constitutional Rights, very appropriately stated the following on the floor of the House of Representatives, when this bill was discussed, and I quote:

> When one visits the courts, which the subcommittee did in 1978, one is impressed by the difference in the two courts. The State courts in Spanish are really the people's court. They are fine courts but loaded with people from every walk of life in Puerto Rico. When one visits the Federal Court in Puerto Rico, it is conducted only in English and one gets the feeling that it is elitist, that it does not represent the people there.

We feel it is extremely important that the option of holding Federal trials in Spanish in Puerto Rico be available in order that our Federal district court be able to dispense that high standard of justice which can be achieved only when the largest possible percentage of the adult population is eligible to serve on juries.

It is estimated that, at present, over 75 percent of the criminal defendants in the U.S. District Court for Puerto Rico are not fluent in English, and therefore require the extensive use of court interpreters. This situation violates one of the basic principles of justice: to wit, that justice within a community should be administered in the language of that community.

As a result of the extensive use of interpreters, Federal trials in Puerto Rico last 30 percent to 58 percent longer than would otherwise be necessary. If Spanish is used, the duration of trials will correspond-

ingly be reduced by the amount of time now required for court interpreters to translate the proceedings from Spanish to English and English to Spanish.

When they speak of the added cost of holding the proceedings in Spanish, I do not know but I have a feeling they have not taken into consideration the costs of the time of the judges and the clerks and the other court officials in the extra length of proceedings when they are held in English. They will have to be simultaneously translated. The figures show they last 30 to 58 percent longer than if held in only one language.

Before concluding my testimony, I should like to emphasize that the approval of this bill will not, in any way, jeopardize the rights of those parties in Puerto Rico who may prefer to have their Federal court proceedings conducted in English.

Your vote in favor of this bill will demonstrate eloquently that the concept of "justice for all" transcends linguistic considerations. With the implementation of this piece of legislation, genuine due process and the enhancement of the quality of justice will emerge as the sole beneficiaries.

The implementation of H.R. 5563 will enable the concepts of due process and the administration of justice to have a greater and more profound meaning for all individuals who come before the Federal District Court for Puerto Rico.

I would like to add in closing that this is not only a law which would be enacted as justice for the people of Puerto Rico but it goes beyond that. As indicated by Congressman Seiberling, the image of the Nation as it is perceived throughout Latin America, one of the problems of dialog, one of the problems of better understanding between Latin America, at least the Spanish-speaking portion, and our Nation, has been that Latin Americans feel that the Americans think of themselves as superior—not that they are but that they feel themselves superior. This is a great gap of misunderstanding.

I think there will be nothing to show the sense of justice and the desire to have equal rights and opportunties provided by this Nation than the embracement of a Latin American community, such as Puerto Rico, not only to participate as we are but to participate more fully if we so choose in the fuller, and in the judicial process the nation says, "Your language is Spanish. Even though you are U.S. citizens your language will be guaranteed and the judicial process will be carried on in the language of your native tongue."

There will be such a strong showing to people throughout the world, the respect this Nation has for individuals, for communities, for citizens and the traditions and the culture, that would be so great that it will have a great impact throughout Latin America. This is why the people who have threatened these hearings today, as indicated by Congressman Seiberling, are those who do not want this to happen because this will destroy and hurt their cause for revolution and creating problems and creating instances of terrorism.

Mr. Chairman, I beseech this committee to take a good look at this bill and support the approval of this bill by the entire Senate and enact it into law as soon as possible. Thank you.

Senator DeConcini. Let me thank you, Governor. Also let me say for the record that indeed I think the people of the United States,

certainly those in Arizona and myself, recognize the sacrifice and the total commitment which the people of Puerto Rico, citizens of our country, have given in past struggles for freedom and for liberty. I wish the other members of the subcommittee were here today to listen to your eloquent presentation and the equities which you present in your statement.

I compliment you in being so well prepared in arguing the legal aspects of this legislation as well as the broader concept of the United States system of justice as it relates to the southern hemisphere.

Governor ROMERO-BARCELO. Thank you very much.

[The prepared statement of Governor Romero-Barcelo follows:]

PREPARED STATEMENT OF GOVERNOR CARLOS ROMERO-BARCELO

My name is Carlos Romero-Barcelo. I am the Governor of Puerto Rico, elected to a 4-year term on November 2, 1976.

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This bill addresses the particular problems of the District Court in Puerto Rico. The firmly established linguistic heritage of Puerto Rican society justifies implementation of the changes contemplated therein. Only in the District Court for Puerto Rico will you find that all the judges, magistrates, the marshals, prosecutors, the public defender, most of the lawyers, the clerk of the court, and staff are Spanish speaking. And what is more important, that court serves a Spanish-speaking community.

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Since language is the principal medium of communication in all legal proceedings, the ability to understand the language in which they are conducted is critical to the fairness of such proceedings. The existing procedure in the District Court for Puerto Rico is neigher the most effective nor the most fair manner in which to carry out proceedings before the court. The appropriate remedy lies in the enactment of this piece of legislation (H.R. 5563). It will do much to guarantee that all persons appearing before the court will be adequately informed of what is happening. The existing situation not only creates hardships for parties and witnesses to civil and criminal proceedings, but also has the effect of summarily excluding half the population from jury duty.

The present language requirement in the Federal District Court for Puerto Rico inevitably produces juries which are not fully representative of the community as a whole. The English language requirement for jury service results in jury panels which are more predominantly "white collar" than would be a cross-section of the general population of the island. This contradicts the policy set forth in the Jury Selection and Service Act of 1968, Public Law 90-724 (28 U.S.C. 1861), which provides that: "All litigants in Federal courts entitled to trial by jury shall have the right to juries selected at random from a fair cross-section of the community."

Furthermore, the present situation denies over half the population of Puerto Rico the right to serve on a Federal jury, and this also runs contrary to the purpose of the act, which provides in its policy statement that: "All citizens shall have the opportunity to be considered for service." If H.R. 5563 becomes law, the spirit of Public Law 90-724 will be upheld, since an individual who can speak, read, write, and understand Spanish may thereupon qualify for jury service if the trial or proceeding for which that person is selected is to be conducted in Spanish.

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one visits the courts, which the subcommittee did in 1978, one is impressed by the difference in the two courts. The State courts in Spanish are really the people's court. They are fine courts but loaded with people from every walk of life in Puerto Rico. When one visits the Federal Court in Puerto Rico, it is conducted only in English and one gets the feeling that it is elitist, that it does not represent the people there."

We feel it is extremely important that the option of holding Federal trials in Spanish in Puerto Rico be available, in order that our Federal district court be able to dispense that high standard of justice which can be achieved only when the largest possible percentage of the adult population is eligible to serve on juries.

It is estimated that, at present, over 75 percent of the criminal defendants in the U.S. District Court for Puerto Rico are not fluent in English, and therefore require the extensive use of court interpreters. This situation violates one of the basic principles of justice: to wit, that justice within a community should be administered in the language of that community.

As a result of the extensive use of interpreters, Federal trials in Puerto Rico last 30 percent to 58 percent longer than would otherwise be necessary. If Spanish is used, the duration of trials will correspondingly be reduced by the amount of time now required for court interpreters to translate the proceedings from Spanish to English and English to Spanish.

Before concluding my testimony, I should like to emphasize that the approval of this bill will not, in any way, jeopardize the rights of those parties in Puerto Rico who may prefer to have their Federal court proceedings conducted in English.

Your vote in favor of this bill will demonstrate eloquently that the concept of "Justice for all" transcends linguistic considerations. With the implementation of this piece of legislation, genuine due process and the enhancement of the quality of justice will emerge as the sole beneficiaries.

The implementation of H.R. 5563 will enable the concepts of due process and the administration of justice to have a greater and more profound meaning for all individuals who come before the Federal District Court for Pureto Rico.

Senator DECONCINI. Next we shall hear from Mr. Baltasar Corrada, Resident Commissioner of Puerto Rico.

STATEMENT OF HON. BALTASAR CORRADA, RESIDENT COMMISSIONER FROM PUERTO RICO

Mr. CORRADA. Mr. Chairman and members of the subcommittee

My name is Baltasar Corrada. I am the Resident Commissioner from Puerto Rico in the U.S. Congress. I thank you for this opportunity to present testimony in favor of H.R. 5563, a bill which will enlarge the concept of justice in all Puerto Rico.

First of all, I would like to express my strong agreement with Governor Romero's statement which presented a very realistic view on the problems that litigants and witnesses face in the Federal district court for Puerto Rico because of the language barriers created by law between the people and the court. This situation, as it was pointed out by the Governor, had adverse effects in the selection and composition of the juries, which are so important for the safeguard of due process in any trial proceeding.

It is important to point out at these hearings that the bill we are considering today is similar in substance to sections 3 and 4 of S. 1315 of the 95th Congress introduced by the honorable Senator, Senator DeConcini, for himself and other Senators, which was passed by the Senate in 1977 and became the Court Interpreters Act. The House of Representatives, at that moment, eliminated these two sections that dealt exclusively with the use of the Spanish language in the Federal District Court for Puerto Rico.

The House of Representatives reasons for eliminating these sections were that they deserved further close examination. Extensive hearings were held by the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee. These hearings led to a revised version of the originally proposed changes for the Federal District Court for Puerto Rico.

This bill includes various changes to the original bill approved by this body. These changes are positive changes in the sense that they look toward an orderly administrative transition in the implementation of the provicions of this bill.

While the bill would apply to all criminal proceedings in which the defendant so requests, and in which case Spanish would be utilized, or in civil cases only if there is a stipulation on the part of the parties, or in the absence of such a stipulation the court so orders in the interest of justice, this is precisely the kind of phase-in procedure the House saw fit to recommend.

It would appear to me to defeat the purpose of this bill if the Senate decided that it will apply the bill only to criminal proceedings but not to civil proceedings because of some utterly pragmatic consideration, because then the gesture of this Senate in recognizing the importance to the Puerto Rican community of being able to utilize Spanish to transact business in the Federal court would be lost. We would be telling the Puerto Rican community, "We will recognize it in criminal proceedings and not in civil proceedings."

Then it will be said it was recognized merely because it appeared in criminal proceedings that it would not cost very much. If it costs $2 million they are not willing to recognize for the Puerto Rican community the right to have the Spanish language utilized, even when the standard provided in the bill is that there must be consensus of the parties in civil proceedings to have this done in Spanish, otherwise it would be English.

Furthermore, Mr. Chairman, I would like to state there are some people who have exaggerated tremendously the cost of this bill. I have seen figures to the effect that 90 translators would be necessary to translate all the cases which would be appealed.

As you know, Mr. Chairman, only about 126 cases were appealed last year in this court, of which about 15 were criminal proceedings and the rest civil proceedings. I believe that in many instances civil cases will continue to be tried in English and not in Spanish because there will not be a stipulation of the parties. I believe in the most complicated civil cases in which parties are contemplating the possibility of an appeal that they will not stipulate that Spanish be the language. These are the practical considerations that will reduce substantially the cost of implementing this legislation from the cost reflected in the cost studies done so far.

Let me tell you, Mr. Chairman, that I cannot accept the fact that 90 translators will be necessary to translate 9 or 10 percent of the cases in the court, which are the cases that would be on appeal, when today in the current system almost 90 percent of all the cases require simultaneous translation and there are only 7 interpreters to do that work.

Mr. Chairman, there is only one reporter for each judge in the court to take the proceedings and transcribe the proceedings when they are appealed.

Mr. Chairman, if we get one translator for each judge, we have five judges now and it will be seven eventually, if we assign one full-time translator to each judge just as now they assign one full-time interpreter and they are now assigned one full-time reporter, I believe that the work could be done. While the record is being transcribed, once the first 10 pages are transcribed those 10 pages can go to the translator so the translations can begin almost simultaneously as the transcript is being prepared.

Senator DECONCINI. Excuse me. Your statement is that you believe that with the full complement of seven Federal judges, to which Puerto Rico is entitled, each of them having a translator and an interpreter—is that correct?

Mr. CORRADA. Yes.

Senator DECONCINI. Which would be two people, 14 necessary to handle this?

Mr. CORRADA. An interpreter would no longer be necessary in all situations inasmuch as the trial would be conducted in Spanish, and therefore an interpreter would not be necessary in that instance, nor would an interpreter be necessary if the trial is conducted in English.

Interpreters may be necessary, let us say, in a trial where Spanish is the language, and for some particular witness there may be a need to have simultaneous interpretation.

Senator DECONCINI. So you might not have to have seven interpreters?

Mr. CORRADA. That is correct. You might need less than seven interpreters but seven full-time translators assigned to the seven judges.

Mr. Chairman, those translators can be translating pleadings when the court is not trying a case. Those translators could be doing different things.

As a matter of fact, those translators could be working during the trial in a case that is expected to be on appeal, so that perhaps provision could be made by the court that in certain cases there will be simultanous translation when the case is being tried.

What I am saying is that there are many ways that the problems presented to you in some of the testimony you will hear today can be overcome if there is the will and a desire to overcome this problem.

Senator DECONCINI. I take it from your experience and the experience of the Governor that there is no shortage of court reporters who can take down the proceedings in Spanish. Is that correct?

Mr. CORRADA. There is no shortage to my knowledge.

Furthermore, let me say in Puerto Rico, because of the fact we are moving into being a bilingual society, we have more people who are capable of translating than the number of people that you would have, let us say, in the U.S. mainland who are capable of translating. There are many more Puerto Ricans in Puerto Rico who are bilingual than there are bilingual people in the United States.

Governor ROMERO-BARCELO. The court reporters were mentioned. We might have a temporary shortage of court reporters in local courts because of the higher pay of the Federal courts which attract them immediately so the Federal courts would have a choice of the very best reporters. Then we might have an interim temporary shortage.

Mr. CORRADA. I have departed from my statement. I will ask that the full statement be inserted.

Senator DECONCINI. It will all appear in the record.

Mr. CORRADA. There is absolutely no reason for having to wait until a full transcript of a proceeding is ready for the translator to begin his work, as stated earlier. Whoever is transcribing the proceedings begins that work. If a transcript is 1,000 pages long, once he has only 10 pages he can pass those to the translator to begin translating, so that that transcript can be used by the translator and he is working almost simultaneously, so that by the time the transcript is ready the translation also can be ready.

If there are corrections to be made to the transcript, as there can be, those corrections can also be made to the translation when the corrections are made to the transcript.

Senator DECONCINI. If the court reporter is using a stenotype machine, how can that be taken out and translated? Does not that reporter have to translate it, at least transcribe it?

Mr. CORRADA. That cannot be translated until it is transcribed. However, once the transcript is begun, once work on the transcript begins, as soon as a page is transcribed then that page can go to the translator so that the translator can begin translation. It would not be necessary for a transcript to be finalized 6 months after they started to work. Translators can work almost simultaneously if they use this system.

Senator DECONCINI. After the proceedings are over?

Mr. CORRADA. Yes.

Senator DECONCINI. And the transcription is in process?

Mr. CORRADA. That is correct, and only in 1 out of 10 cases that are appealed because the transcript would be necessary only if there is an appeal.

Furthermore, Mr. Chairman, in many cases transcripts do not encompass the entire record. The parties stipulate which portions they want transcribed. Obviously only those portions would be translated as well.

That is all I have, Mr. Chairman.

Senator DECONCINI. Your full statement will be inserted in the record at the appropriate point.

One of the important things pointed out by you is that in fact today roughly 40 or 43 percent of the people are really barred from participating in the jury system in the Federal courts. Was that an accurate observation?

Mr. CORRADA. Yes.

Senator DECONCINI. Certainly that does not lend itself to our constitutional commitment of all citizens to be judged by their peers. I think that is a very important point.

I have no further questions. Thank you very much for your testimony.

[The prepared statement of Mr. Corrada follows:]

PREPARED STATEMENT OF RESIDENT COMMISSIONER BALTASAR CORRADA

My name is Baltasar Corrada. I am the Resident Commissioner from Puerto Rico in the U.S. Congress. I thank you for this opportunity to present testimony in favor of H.R. 5563, a bill which will enlarge the concept of justice in all Puerto Rico.

First of all, I would like to express my strong agreement with Governor Romero's statement which presented a very realistic view on the problems that litigants and witnesses face in the Federal District Court for Puerto Rico because of the language barriers created by law between the people and the court. This situation, as it was pointed out by the Governor, has adverse effects in the selection and composition of the juries, which are so important for the safeguard of due process in any trial proceeding.

It is important to point out at these hearings that the bill we are considering today is similar in substance to sections 3 and 4 of S. 1315 of the 95th Congress introduced by the honorable Senator, Senator DeConcini, for himself and other Senators, which was passed by the Senate in 1977 and became the Court Interpreters Act. The House of Representatives, at that moment, eliminated these two sections that dealt exclusively with the use of the Spanish language in the Federal District Court for Puerto Rico.

The House of Representatives reasons for eliminating these sections were that they deserved further close examination. Extensive hearings were held by the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee. These hearings led to a revised version to the originally proposed changes for the Federal District Court for Puerto Rico.

This bill includes various changes to the original bill approved by this body. These changes are positive changes, in the sense that they look toward an orderly administrative transition in the implementation of the provisions of this bill.

Recognizing that some administrative changes have to be implemented, section 3 of this bill provides that the first two sections of this bill shall take effect 1½ years after the enactment of this act. This phased-in period, in addition to the periodic reports that the Administrative Office of the U.S. Courts will submit to Congress during that year and a half will pave the road for a smoother transition.

Another important feature in this bill is that at the end of every third year a series of reports must be made to Congress on the implementation of this act. These reports will be submitted by the Administrative Office of the U.S. Courts in conjunction with the U.S. District Court for Puerto Rico. These reports are intended to facilitate Congress oversight capacity concerning the implementation of the act and to assist the Congress in its determination of the possible renewal of this legislation prior to its sunset date which is of 12 years.

All parties concerned with these bills should be aware of these safeguard provisions that were included looking for the best solution to an admittedly difficult and complex problem.

Senator DeConcini. We will now hear from Judge Hernan Pesquera, chief judge from the district of Puerto Rico.

STATEMENT OF HON. HERNAN G. PESQUERA, CHIEF JUDGE, DISTRICT OF PUERTO RICO, ACCOMPANIED BY PEDRO JIMINEZ

Senator DeConcini. We welcome you before the subcommittee.

If you have a statement, we will be glad to have it in the record in full.

Judge Pesquera. I brought my lawyer with me as well.

Senator DeConcini. What an expert judge you must be. We welcome you.

Judge Pesquera. Mr. Chairman, I am Hernan G. Pesquera, chief judge of the U.S. District Court for Puerto Rico. I appear before you today to state my personal views on H.R. 5563 and to convey my impressions and those of various judicial, administrative and adjunct bodies in Puerto Rico regarding the impact of such legislation on our court.

First, I wish to make it clear that I have personally opposed this proposed legislation since its inception. It is my firm belief that not since the reestablishment of our judicial district in 1970 has our court faced such serious danger of estrangement from the rest of the Federal

judicial community as the one posed today by H.R. 5563. However, I do not come today to restate my reservations on constitutional or policy grounds. I believe they are part of the record and need not be expounded. It is my pressing duty, however, to try to convey the potential administrative and judicial havoc lurking in the language of the bill and to emphasize the indispensability of a comprehensive professional study before the enactment of any legislation of this type.

As you well know, this proposed legislation has aroused considerable concern at all levels of the Federal judiciary. From the clerk of the court in Puerto Rico, the judges thereof, the judicial council of the first circuit, to the Judicial Conference of the United States, all have expressed serious reservations about this bill. Although the arguments have been diversified, a cogent, trenchant proposition has permeated all: the dire need for a comprehensive study on the necessity and consequences of such legislation. I cannot overemphasize the need for such study. Since the bill was first introduced, only two investigations have been performed, both by Ms. Garsh of the first circuit council. These were intended to be superficial probings mainly based on interviews and statistical assumptions. A comprehensive, professional, scientifically sound study is nowhere to be found. As a result, there are literally dozens of weighty questions that remain unanswered, all of which pose a potential threat to the Federal judicial system in Puerto Rico.

I will give you some examples of such unanswered queries concerning the implementation of this legislation. My list is not intended to be exhaustive, especially since this bill has had the effect on many of us to elicit a new question every time it is read.

One, language as an additional issue:

The first judicial effect of H.R. 5563 is, needless to say, to convert language into an issue. Under paragraph 3 of the first section, the court must decide the language to be used every time the parties cannot stipulate to that effect. Factors such as the complexity of the case, the likelihood of appeal and the likelihood of emergency relief being sought have been signaled as relevant elements in the court's language choice. This could arguably result in English being the only choice in actions filed against resourceful defendants who could more easily complicate a case and would be likelier to appeal.

Likewise, the English-speaking American from the continent would have to take the risk of having his case held in Spanish, making the underlying purpose of diversity jurisdiction less operative. The local litigant who would rather have filed his case in local courts is now invited to take a chance and see whether he can convince the court to conduct his case in Spanish. If the court rules otherwise "in the interests of justice," the result could well be an unwilling litigant in a forum he did not exactly choose. The same is true as to local attorneys who choose not to practice in our court because of their alleged lack of command of the English language. They would also come to play the "language Russian roulette." In synthesis, the choice of language would become as much part of litigation tactics as have lengthy interrogatories, pairing English-speaking parties and attorneys against their Spanish-speaking counterparts, with possible political undertones ensuing. Under current practice, there is but one choice for everyone, and it is not open to challenge or controversy at anyone's whim.

Two, increase in caseload:

Our court has been working for many years with a caseload way over the national average. It is admitted by all parties involved in this proposed legislation that passage of the same would definitely result in the additional filing of a substantial number of cases that are now filed in local courts. Conservative speculations have estimated over 1,000 additional filings per year which, by current statistics, is about 30 percent of the total yearly filing. I don't have to stress the impact that such sudden increase can have in our court. This notwithstanding, not one attempt to collect the relevant statistics has been made in this whole legislative process.

Three, trial duration and appeals:

The professed purpose of this bill has been to afford better procedural safeguards to Spanish-speaking litigants in Federal court. However, as we well know, one of the basic postulates of due process is that justice delayed is justice denied. It appears to me that the translation problems arising from this legislation could well lessen the process due in both civil and criminal cases at both the original and appellate levels. Governor Romero-Barcelo has testified that some criminal trials in our court "are prolonged 30 to 58 percent longer than would be necessary if the proceedings could be conducted in Spanish."

Although I don't know where such statistics were obtained, it is difficult for me to see how simultaneous interpretation such as utilized in our court can increase trial time by such an amount. Regarding nontrial time, this is regulated uniformly by the Speedy Trial Act, which allows no exceptions for interpretation or translation. Consequently, I do not believe that current practice results in any type of undue delay in criminal or civil cases.

Passage of the bill would, however, present the following problems entailing excessive time waste. Basically all legislation and case law in criminal matters is in English. If the criminal case were to be held in Spanish, the court would have to grant the myriad petitions for enlargement of time regarding translation of legal materials in memoranda, pretrial motions, and other pleadings.

Likewise, the investigative reports of law enforcement agencies and all other documents of the FBI, the Department of Justice, DEA, and others are drafted in English. Many of the agents and personnel of these agencies are solely English speaking. Translation of such reports and documents into Spanish, when used as exhibits or otherwise incorporated into the case file, would require considerable time. Moreover, in criminal as well as civil cases, the exact meaning of a phrase, word, or sentence is often crucial. This is now promptly taken care of in open court, a problem which avoids any interpretive problems arising from the translation of a particular phrase. Were the bill to be enacted into law, translation controversies could certainly become the rule.

Even more crucial is the delay which will unquestionably be occasioned in appeal proceedings. It is impossible to gage at this time how many appeals from Spanish proceedings will be taken to the circuit court. However, it is expected that transmittal of the appeal record will take considerably longer than at present. Again, reliable statistics on all these aspects of duration are nowhere to be found.

Four, effect on the jury:

In addition to increase in our caseload and undue delays, I believe the jury system will also suffer. The proponents of this legislation have often stated that one of the principal purposes underlying the bill is to correct any constitutional infirmities affecting our jury system insofar as the present English-understanding requirement tends to make it unrepresentative of a fair cross-section of the local community. Such legislative intent is highly praisable. However, the alternative proposed by the bill appears to contemplate the creation of two separate jury wheels. It is difficult for me to see how such establishment of a Spanish-speaking or bilingual wheel and an English-speaking wheel would cure such alleged infirmities. Such alternative would be like bisecting an infectious bacteria only to see it turn into two new organisms. Furthermore, I don't know if the creation of two separate jury wheels is constitutionally permissible. There is, however, copious case law upholding the constitutionality of our present jury system. Again must I state that no serious up-to-date study has been undertaken on jury representativeness, or knowledge of languages by Puerto Ricans, by Congress or anybody else. The available statistics come from private studies or from 1970 census figures, and are in most instances either inapposite or obsolete.

Five, visiting judges.

Another matter previously discussed which I wish to restate is the effect of the proposed legislation on our current program of visiting judges. As stated before, our court has a caseload well above the national average. This weight has been greatly alleviated in the past by the collaboration of several visiting judges from other districts. Passage of the bill would deprive us of their assistance in all Spanish proceedings, increasing the backlog of each individual local judge.

Six, effect on other agencies.

Still another major area hitherto left practically unexplored is the effect that this legislation will have on other Federal agencies related to the U.S. district court. I will give you some examples:

The bankruptcy court in Puerto Rico is a body adjunct to the district court. Section 404(a) of the new Bankruptcy Act establishes it as a "separate department" of the district court. Under the first circuit rules for bankruptcy appeals in Puerto Rico, the district court is the appellate entity in bankruptcy cases, unlike all other Federal districts in the circuit. The proposed legislation would thus be of full applicability to the bankruptcy court. Such fact is recognized in the House report where the committee recommends adoption of different rules for implementation of the law in bankruptcy proceedings.

In the prior joint statement by the bankruptcy judges, they expressed their concern over the inclusion in the bill of procedural provisions, inasmuch as the bankruptcy court had under the local rules an established procedure regarding the use of language which responded more closely to the unique nature of bankruptcy proceedings. The suggestion that the bankruptcy court draft its own rules to implement the proposed act is an additional example of the dormant threats posed by this bill. To be consistent with the act, the bankruptcy court would have to have all pleadings in Spanish proceedings be drafted in Spanish. Equal language uniformity appears to be required by the act in English proceedings. The bankruptcy court, however, has no

translators, interpreters or permanent court reporters. It remains unclear whether the proposed legislation leaves the bankruptcy court completely free to depart from the procedures established by the bill or whether to be consistent therewith the bankruptcy rules must contain provisions requiring uniformity of language in its proceedings. This would have a bearing on the need for space and personnel in the bankruptcy court and also on the appeals taken from said court to the district court. Again, this area remains unexamined.

A somewhat analogous situation is present with the U.S. Probation Office. According to said office, the major impact of this bill would be in the area of presentence report preparation in meeting deadlines. When convicted defendants are committed to custody, their presentence investigation report must be mailed the same day to the Bureau of Prisons for the purpose of designating the institution where they are to serve their sentence. Consequently, in Spanish criminal trials, said report, which is rather exhaustive, must be drafted in Spanish and translated into English. The Speedy Trial Act limitations reduces the time frame for preparation of presentence reports to assure expeditious sentencing. Moreover, presentence report translation must be effected by the U.S. Probation Office, since such reports are of a confidential nature. The U.S. Probation Office believes that it would be impossible for them to implement the requirements of this bill without additional translation personnel, typists and the accompanying pace and facilities.

Maybe the most virulent impact of this proposed legislation, apart from our court, would fall on the U.S. Department of Justice, specifically the U.S. Attorney's Office.

In its representation of Federal clients, the U.S. Attorney's Office receives in both civil and criminal cases exhibits, investigative reports, legal memoranda, transcripts and many other documents in English. This is so because English is the official language of Federal agencies everywhere, and because a substantial percentage of Federal personnel in local Federal agencies is solely English speaking. Needless to say, documents from Federal agencies in the mainland United States are wholly drafted in English.

In criminal cases, many of such investigative reports and some memoranda are made part of the case file. Inasmuch as there can be no guess of the language that will be chosen by the eventual criminal defendant, such documents will many times have to be translated into Spanish. I must remind you that not all local Federal law enforcement personnel are proficient in Spanish. In civil cases involving the United States or an agency thereof, the situation would complicate even more. Needless to say, the ever burgeoning caseload in the U.S. Attorney's Office requires the preparation of "litigation packages" from the various agencies it represents. This includes legal memoranda wholly drafted in English, and several other documents intended to become pleadings in civil cases.

Translation of all these would not only be overly burdensome but impracticable. Such would also be the case with the particularly intricate Federal regulations, statutes, and cases of which there is no official Spanish translation available. I believe that the U.S. Attorney's Office will oppose the use of Spanish in the totality of their civil cases.

Since the Government, with some exceptions, is to be treated as any other party in legal proceedings, the need to choose the language "in the interest of justice" would be an automatic concomitant of civil cases involving the Federal Government as a party.

I will illustrate with an example: From April 1, 1979, to March 31, 1980, there were 2,981 civil filings and 352 criminal filings in our court. Out of these, cases filed by social security claimants against the Secretary of Health, Education, and Welfare numbered 370, that is, 12.4 percent of civil filings for that period. The vast majority of these actions is filed by indigent plaintiffs with lack of sufficient knowledge of English, who would, needless to say, prefer Spanish in their cases. All of these cases involve transcripts of the administrative proceedings which might average 150 pages and which are in English. These transcripts are part of the case file, although filed separately, and are indispensable to decide these cases.

Additionally, legal memoranda in almost all such cases is prepared for the Government by the Office of the General Counsel of Health, Education, and Welfare in Washington, in English. Translation of this mass of documents would be, to say the least, a colossal task for either the U.S. Attorney's Office or the district court. On the other hand, if the court decided "in the interest of justice" that English is to be used in such cases, we would in fact be discriminating against the largest mass of solely Spanish-speaking litigants that come to our court.

Again I must state that the lack of an adequate study leaves this dilemma unsolved.

Seven, the effect on civil and criminal procedure.

Another area that seems to have lacked proper investigation is the effect of H.R. 5563 on the intricate scheme of the Rules of Federal Procedure. In criminal proceedings, defendants are frequently jointly indicted and tried, for multiple reasons of law and convenience. Motions for severance under rule 14 of the Federal Rules of Criminal Procedure are common in such instances. Usually, such motions are denied if the court determines that defendants are not prejudiced by such joinder. Passage of the bill would arguably imply that a new ground for severance would be the defendants' inability to agree on the choice of language. This could become part of the new "language tactics" for criminal lawyers.

Regarding the Federal Rules of Civil Procedure, multiple situations would arise. I shall explain myself.

Let us suppose that I decide that the "interests of justice" require the use of Spanish in a given case; well after the case has started, and several pleadings have been filed in Spanish, a defendant brings third-party defendant under rule 14. The inclusion of such new party, and the nature of the new causes of action thereagainst might arguably require "in the interests of justice" to switch back to English. Such party could be prejudiced if the case were continued in Spanish, especially if such language had been stipulated by the other parties to the suit.

On the other hand, a change of language in the middle of the case would not only appear impractical, but meet the opposition of the parties originally favoring Spanish in said suit. Language would become

an obstacle to the speedy implementation of the Federal Rules of Civil Procedure. This example could very well arise not only with third-party practice, but with intervention of new parties under rule 24, inclusion of necessary or indispensable parties under rule 19 or interpleaders under rule 22.

This proposed legislation could not only proliferate disputes regarding inclusion of new parties or causes of action once the cases are underway, but would also affect discovery proceedings such as in-trial subpenas under rule 45. Obviously, a solely Spanish-speaking juror will not understand documents drafted in English and brought to open court pursuant to a subpena duces tecum. Likewise, vacated default judgments under rule 55 might have to be translated, as the appearance of the defaulted party might require a change in the choice of language. Furthermore, cases which would be proper subjects of consolidation under rule 42 would have to pass the language gantlet. Again, situations which could arise are legion, and not one single professional investigation as to the impact of this proposed legislation has been made.

Honorable Senators, I must be candid in stating that it is difficult for me to understand how an admittedly complicated enterprise such as creating the first bilingual court jurisdiction in the history of the United States has been undertaken without one single piece of pertinent statistical information or analysis elicited by a comprehensive scientific inquiry into the procedural and administrative effects of such legislation.

Of course, there has been much praisable concern by Congress over the effects and impact of this bill. Various hearings have been held and many speakers have been heard. The House Subcommittee on Civil and Constitutional Rights has always expressed its interest that the bill meet the needs of both the Puerto Rican community and our district court. However, I believe that a more thorough compilation of statistics and professional analysis is required to reach such laudable goals.

I now wish to turn into the area of costs. Now, I have no opinion as to whether this legislation would be costly or not. Budgetary policy is for Congress alone to determine, and I would be obviously underqualified to express an opinion as to this point. It is my duty as chief judge of the U.S. District Court for Puerto Rico, however, to convey to you as energetically as possible, that passage of this legislation without an adequate concomitant budgetary appropriation would create an unprecedented quandary in the Federal judicial system in Puerto Rico.

Let me give you a brief historical background. Our district court is located in the U.S. Post Office and Courthouse Building in Old San Juan. The court occupies most of this building. Some time ago, construction of the new court facilities in Hato Rey was concluded. The new courthouse was obsolete by the time it was finished because, among other things, Congress had created four new judgeships. At this moment, reconstruction is scheduled to start in the new courthouse so as to accommodate the additional judges and their staffs. The considerable projected increase in the clerk's office personnel requires that the same be moved to the adjoining facilities of the

Federal building, together with other court dependencies. Completion of such project is expected for calendar year 1985.

In the meantime, some appointments of necessary court personnel are being withheld for lack of space and facilities. In other words, we are so overcrowded in our present facilities, that we are utilizing every single available space to accommodate personnel.

Passage of the bill as proposed would lunge an influx of additional personnel creating a problem of Malthusian proportions in our court, with no foreseeable short-term solution short of renting available private space from the surroundings, with the obvious inconveniences that this would occasion. Long-term solutions would require revamping the present prospectus of reconstruction for the new courthouse, with the ensuing delay.

This brings me to what I consider the most alarming part of the House report on this bill—the cost estimate. The House Committee on the Judiciary adopted the Congressional Budget Office cost estimate with reservations, noting that the figures provided by the Administrative Office of the U.S. Courts appeared to be inflated. Although I do not have a copy of such figures with me, it appears to me that the estimate provided by the CBO is not only conservative, but unrealistic.

I must emphasize the following: It is undisputed that passage of the bill will bring a substantial amount of new filings in cases with concurrent jurisdiction which are presently filed in local Puerto Rican courts. How large an amount, is impossible to predict. Nevertheless, conservative speculations have estimated well over 1,000 additional yearly filings. Based on the formula used by the Administrative Office, this would mean approximately 12 to 15 new employees. This includes docket clerks, counter clerks, filing clerks, and jury clerks. Taking the JS grade 5 salary as an average, this would amount to an additional $150,000 per annum. This figure could soar up depending on the actual increase of filings accountable to the act. This is contemplated in neither the Administrative Office figures or the CBO cost estimates.

Moreover, although the House report considers a JS–11 pay scale for translators as rather high on an average, it is important to note that our main problem with translators and interpreters in the past has been a rather large turnover rate, largely accountable to the fact that these employees were being underpaid. Most of them have graduate degrees or are on their way to obtaining them. Needless to say, passage of the bill would increase the need for proficient translators, as the language in legal matters requires sufficient expertise as to avoid potentially costly mistakes. Taking this into account, I believe it is reasonable to set JS–11 as an appropriate average scale for certified translators. Furthermore, although the House committee believed that the AO estimate of 50 new translators was somewhat exaggerated, I invite you to reconsider in the light of the factors mentioned by me today.

I also invite you to take into account an item which appears to have been totally neglected in the CBO cost estimate. This is the costs for additional personnel, space, and facilities for the bankruptcy court, the U.S. attorney's office and the U.S. probation office. As stated before, these agencies will require the hiring of translators, secretaries,

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and related personnel with the accompanying space and facilities if they are to comply with the demands of the act. An adequte budgetary assignment would be essential to proper implementation for such agencies. The necessary cost estimate is lacking and, again, a cost study or statistical sampling would be of great help.

Regarding court reporters, it is important to note that Spanish stenography is wholly different from English stenography. Mainly for this reason there are no court reporters in our island trained to transcribe in both languages. Therefore, the proposed legislation would require the existence of a permanent standby force of additional court reporters inasmuch as various judges may be holding trials in Spanish or in English at the same time. The use of recording devices as an alternative has proved unsound and could only serve as a backup to stenographic reporting.

Finally, the CBO cost estimate assumes that most lengthy civil cases requiring time-consuming translations for appellate purposes will be conducted in English. Although this would undoubtedly be the ideal situation, I must observe that the complexity of a case and the likelihood of appeal are not always apparent at the incipient stages of the proceeding. Likewise, the voluminosity of a case file is not necessarily proportional to the complexity of the causes of action pleaded in the complaint. Therefore, in many instances the proper language choice would only become apparent after some time has transpired from the commencement of the action and various pleadings have been filed.

Mr. Chairman, members of the subcommittee, I beg your pardon if I have repeated myself on the need for a study or on my request that the cost estimate be revised. I am well aware that a lot of thought and reflection has been given to this legislation. Its underlying policies are unquestionably worthy of praise. As a Federal judge, I myself have strived for over 7 years to assure due process for all Puerto Ricans. As a matter of fact, this is what I get paid for. I am honestly concerned, however, that this bill will too often delay and hamper the proper administration of justice and seriously jeopardize our court system in Puerto Rico. A pilot plan, as suggested by various prior deponents, could well answer all our queries and serve as a basis for a more complete legislation which would fulfill the original policies, and at the same time assure the expedient impartation of justice in our island. A most illustrative statement on this respect was made by Chief Judge Coffin of the first circuit on August 9, 1978. I suggest reference to the same, as I find it very valuable.

Thank you very much for your attention. Mr. Chairman, I have just found out that although sent by express mail, the final copies of my prepared statement did not arrive on time. I'm sorry for any inconvenience this may have brought. I request permission from the subcommittee to submit copies of my statement in the next days. Thank you again.

Senator DECONCINI. Judge, we thank you for your very comprehensive approach to this problem.

The gentleman with you is Pedro Jiminez. We are pleased to have had you here as well.

First of all, Judge, the Court Interpreters Act which the 95th Congress did pass, has that functioned well in the district court in Puerto Rico?

Judge PESQUERA. We have simultaneous interpretation.

Senator DECONCINI. Did you have that before?

Judge PESQUERA. We have always had that.

Senator DECONCINI. Would you expect the number of civil cases under the court's diversity jurisdiction to increase if the Spanish language were an option?

Judge PESQUERA. Definitely. That seems the opinion of practically everybody.

Senator DECONCINI. Which would place a greater burden on your court obviously?

Judge PESQUERA. Definitely.

Senator DECONCINI. Further, Judge Pesquera, if there were a procedure whereby you as a Federal judge could consider a petition that the proceedings be held in Spanish, how does that strike you as a possible form of legislation? Have you ever come across a situation such as the Governor pointed out, where the defendant does not speak any English and, consequently, there is no interpretation except what the defendant's or the plaintiff's lawyer can tell him during the proceedings?

Judge PESQUERA. I do not want to correct our Governor because I like him so much. However, actually he has been out of practice for some time.

The truth of the matter is that in criminal cases you do have a lot of defendants who do not understand English. I would say not too many, but you have some.

The use of interpreters in my court, the interpreter translates everything and sits right next to the defendant and tells him what is going on all the time.

Senator DECONCINI. Then there is an interpreter for the defendant or the plaintiff as well as for the court?

Judge PESQUERA. No, sir. We use one interpreter. We are talking about two different things now.

If you have a criminal case the interpreter sits next to the defendant and informs him of everything going on.

Senator DECONCINI. And he interprets out loud to the defendant or to the court, or both?

Judge PESQUERA. If the witness is testifying in Spanish, then he translates in English in a loud voice. The interpreter translates in a loud voice so the court reporter can take it down.

Senator DECONCINI. And the defendant can understand that?

Judge PESQUERA. Yes. If he is not testifying in Spanish and is testifying in English, then he does not translate in a loud voice but he quietly or with the use of earphones translates.

Senator DECONCINI. How about civil cases?

Judge PESQUERA. There we have something which the Governor pointed out, and he is correct. In a civil case if the witness is testifying in Spanish, then the interpreter has to translate for the court, and he does that in a loud voice so everybody knows what is going on. If the witness is testifying in English, then we do not have that additional interpreter sitting next to the plaintiff.

Senator DECONCINI. Or the defendant, either one. They would have to supply that themselves?

Judge PESQUERA. They usually do supply that themselves. I would say in civil cases very few people do not understand what is going on in English.

Senator DECONCINI. The Governor and the Congressman—the Resident Commissioner—pointed out that about 57 percent of the population of Puerto Rico is not fluent in the English language. Does that bar them from serving on the Federal juries?

Judge PESQUERA. The requirement is not to be fluent in English but really only to understand in English.

Senator DECONCINI. What would your estimate be as to how many can serve out of the population?

Judge PESQUERA. I have no way of telling you that, Mr. Chairman. That is one of the points I make in my paper. How many are there who claim they are not able to understand English is unknown because they may not want to serve as jurors.

Senator DECONCINI. Thank you very much for your statement.

[The prepared statement of Judge Pesquera follows:]

PREPARED STATEMENT OF CHIEF JUDGE HERNAN G. PESQUERA

I am Hernan G. Pesquera, chief judge of the U.S. District Court for Puerto Rico. I appear before you today to state my personal views on H.R. 5563 and to convey my impressions and those of various judicial, administrative and adjunct bodies in Puerto Rico regarding the impact of such legislation on our court.

First, I wish to make it clear that I have personally opposed this proposed legislation since its inception. It is my firm belief that not since the reestablishment of our judicial district in 1970 has our court faced such serious danger of estrangement from the rest of the Federal judicial community as the one posed today by H.R. 5563. However, I do not come today to restate my reservations on constitutional or policy grounds. I believe they are part of the record and need not be expounded. It is my pressing duty, however, to try to convey the potential administrative and judicial havoc lurking in the language of the bill and to emphasize the indispensability of a comprehensive professional study before the enactment of any legislation of this type.

As you well know, this proposed legislation has aroused considerable concerns at all levels of the Federal judiciary. From the clerk of the court in Puerto Rico, the judges thereof, the judicial council of the first circuit, to the Judicial Conference of the United States, all have expressed serious reservations to the bill. Although the arguments have been diversified, a cogent, trenchant proposition has permeated all: the dire need for a comprehensive study on the necessity and consequences of such legislation. I cannot overemphasize the need for such study. Since the bill was first introduced, only two investigations have been performed, both by Ms. Garsh of the first circuit council. These were intended to be superficial probings mainly based on interviews and statistical assumptions. A comprehensive, professional, scientifically sound study is nowhere to be found. As a result, there are literally dozens of weighty questions that remain unanswered, all of which pose a potential threat to the Federal judicial system in Puerto Rico.

I will give you some examples of such unanswered queries concerning the implementation of this legislation. My list is not intended to be exhaustive, especially since this bill has had the effect on many of us to elicit a new question every time it is read.

(1) LANGUAGE AS AN ADDITIONAL ISSUE

The first judicial effect of H.R. 5563 is, needless to say, to convert language into an issue. Under paragraph 3 of the first section, the court must decide the language to be used every time the parties cannot stipulate to that effect. Factors such as the complexity of the case, the likelihood of appeal and the likelihood of emergency relief being sought have been signaled as relevant elements in the court's language choice. This could arguably result in English being the only choice in actions filed against resourceful defendants who could more easily complicate a case and would be likelier to appeal. Likewise, the English-speaking American from the continent would have to take the risk of having his case held in Spanish, making the underlying purpose of diversity jurisdiction less operative. The local litigant who would have rather filed his case in local courts is now invited to take a chance and see whether he can convince the court to conduct his case in Spanish. If the court rules otherwise "in the interests of justice," the

result could well be an unwilling litigant in a forum he did not exactly choose. The same is true as to local attorneys who choose not to practice in our court because of their alleged lack of command of the English language. They would also come to play the "language-Russian roulette." In synthesis, the choice of language would become as much part of litigation tactics as a lengthy interrogatory, pairing English-speaking parties and attorneys against their Spanish-speaking counterparts, with possible political undertones ensuing. Under current practice, there is but one choice for everyone, and it is not open to challenge or controversy at anyone's whim.

(2) INCREASE IN CASELOAD

Our court has been working for many years with a caseload way over the national average. It is admitted by all parties involved in this proposed legislation that passage of the same would definitely result in the additional filing of a substantial number of cases that are now filed in local courts. Conservative speculations have estimated over 1,000 additional filings per year [1] which, by current statistics, is about 30 percent of the total yearly filing. I don't have to stress the impact that such sudden increase can have in our court. This notwithstanding, not one attempt to collect the relevant statistics has been made in this whole legislative process.

(3) TRIAL DURATION AND APPEALS

The professed purpose of this bill has been to afford better procedural safeguards to Spanish-speaking litigants in Federal court. However, as we well know, one of the basic postulates of due process is that justice delayed is justice denied. It appears to me that the translation problems arising from this legislation could well lessen the process due in both civil and criminal cases at both the original and appellate levels. Congressman Corrada has testified that some criminal trials in our court "are prolonged 30 to 58 percent longer than would be necessary if the proceedings could be conducted in Spanish".[2]

Although I ignore where such statistics were obtained, it is difficult for me to see how simultaneous translation such as utilized in our court can increase trial time by such an amount. Regarding nontrial time, this is regulated uniformly by the Speedy Trial Act, which allows no exceptions for translation. Consequently, I do not believe that current practice results in any type of undue delay in criminal or civil cases.

Passage of the bill would, however, present the following problems entailing excessive time waste: Basically all legislation and case law in criminal matters is in English. If the criminal case were to be held in Spanish, the court would have to grant the myriad petitions for enlargement of time regarding translation of legal materials in memoranda, pretrial motions and other pleadings. Likewise, the investigative reports of law enforcement agencies and all other documents of the FBI, the Department of Justice, DEA and others are drafted in English. Many of the agents and personnel of these agencies is solely English speaking. Translation of such reports and documents into Spanish, when used as exhibits or otherwise incorporated into the case file, would require considerable time. Moreover, in criminal as well as civil cases, the exact meaning of a phrase, word, or sentence is often crucial. This is now promptly taken care of in open court doing away with discussions on interpretive problems arising from the translation of a particular phrase. Were the bill to be enacted into law, translation controversies could certainly become the rule.

Even more so is the delay which will unquestionably be occasioned in appeal proceedings. It is impossible to gauge at this time how many appeals from Spanish proceedings will be taken to the circuit court. However, it is expected that transmittal of the appeal record will take considerably longer than at present. Again, reliable statistics on all these aspects of duration are nowhere to be found.

(4) EFFECT ON THE JURY

In addition to increase in our caseload and undue delays, I believe the jury system will also suffer. The proponents of this legislation have often stated that one of the principal purposes underlying the same is to correct any constitutional infirmities affecting our jury system insofar as the present English-understanding

[1] Ms. Garsh's Supplemental Memorandum of Apr. 11, 1979.
[2] Report on H.R. 5565, No. 96-847, p. 4, n. 3.

requirement tends to make it unrepresentative of a fair cross-section of the local community. Such legislative intent is highly praisable. However, the alternative proposed by the bill appears to contemplate the creation of two separate jury wheels. It is difficult for me to see how such establishment of a Spanish-speaking or bilingual wheel and an English-speaking wheel would cure such alleged infirmities. Such alternative would be like bisecting an infectious bacteria only to see it turn into two new organisms.

Furthermore, I don't know if the creation of two separate jury wheels is constitutionally permissible. There is, however, copious case law upholding the constitutionality of our present jury system. Again must I state that no serious up-to-date study has been undertaken on jury representativeness or knowledge of languages by Puerto Ricans by Congress or anybody else. The available statistics come from private studies or from 1970 census figures, and are in most instances either inapposite or obsolete.

(d) VISITING JUDGES

Another matter previously discussed which I wish to restate is the effect of the proposed legislation on our current program of visiting judges. As stated before, our court has a caseload well above the national average. This weight has been greatly alleviated in the past by the collaboration of several visiting judges from other districts. Passage of the bill would deprive us of their assistance in all Spanish proceedings, increasing the backlog of each individual local judge.

(e) EFFECT ON OTHER AGENCIES

Still another major area hitherto left practically unexplored is the effect that this legislation will have on other Federal agencies related to the U.S. District Court. I will give you some examples:

The bankruptcy court in Puerto Rico is a body adjunct to the district court.[3] Section 404(a) of the new Bankruptcy Act establishes it as a "separate department" of the district court. Under the first circuit rules for bankruptcy appeals in Puerto Rico, the district court is the appellate entity in bankruptcy cases, unlike all other Federal districts in the circuit. The proposed legislation would thus be of full applicability to the bankruptcy court. Such fact is recognized in the House report [4] where the committee recommends adoption of different rules for implementation of the law in bankruptcy proceedings.

In the prior joint statement by the bankruptcy judges, they expressed their concern over the inclusion in the bill of procedural provisions, inasmuch as the bankruptcy court had under the local rules an established procedure regarding the use of language which responded more closely to the unique nature of bankruptcy proceedings. The suggestion that the bankruptcy court draft its own rules to implement the proposed act is an additional example of the dormant threats posed by this bill. To be consistent with the act, the bankruptcy court would have to have all pleadings in Spanish proceedings be drafted in Spanish.

Equal language uniformity appears to be required by the act in English proceedings. The bankruptcy court, however, has no translators, interpreters or permanent court reporters. It remains unclear whether the proposed legislation leaves the bankruptcy court completely free to depart from the procedures established by the bill or whether to be consistent therewith the bankruptcy rules must contain provisions requiring uniformity of language in its proceedings. This would have a bearing on the need for space and personnel in the bankruptcy court and also on the appeals taken from said court to the district court. Again, this area remains unexamined.

A somewhat analogous situation is present with the U.S. Probation Office. According to said office, the major impact of this bill would be in the area of presentence report preparation in meeting deadlines. When convicted defendants are committed to custody, their presentence investigation report must be mailed the same day to the Bureau of Prisons for the purpose of designating the institution where they are to serve their sentence. Consequently, in Spanish criminal trials, said report (which is rather exhaustive) must be drafted in Spanish and translated into English. The Speedy Trial Act limitations reduces the time frame for preparation of presentence reports to assure expeditious sentencing.

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[3] 28 U.S.C. 151(a).
[4] Report on H.R. 8982, p. 12.

Moreover, presentense report translation must be effected by the U.S. Probation Office, since such reports are of a confidential nature. The U.S. Probation Office believes that it would be impossible for them to implement the requirements of this bill without additional translation personnel, typists and the accompanying space and facilities.

Maybe the most virulent impact of this proposed legislation, apart from our court, would fall on the U.S. Department of Justice, specifically the U.S. Attorney's Office.

In its representation of Federal clients, the U.S. Attorney's Office receives in both civil and criminal cases exhibits, investigative reports, legal memoranda, transcripts and many other documents in English. This is so because English is the official language of Federal agencies everywhere, and because a substantial percentage of Federal personnel in local Federal agencies is solely English speaking. Needless to say, documents from Federal agencies in the mainland United States are wholly drafted in English.

In criminal cases, many of such investigative reports and some memoranda are made part of the case file. Inasmuch as there can be no guess of the language that will be chosen by the eventual criminal defendant, such documents will many times have to be translated into Spanish. I must remind you that not all local Federal law enforcement personnel are proficient in Spanish.

In civil cases involving the United States or an agency thereof, the situation would complicate even more. Needless to say, the ever burgeoning caseload in the U.S. Attorney's Office requires the preparation of "litigation packages" from the various agencies it represents. This includes legal memoranda wholly drafted in English, and several other documents intended to become pleadings in civil cases. Translation of all these would not only be overly burdensome but impracticable. Such would also be the case with the particularly intricate federal regulations, statutes and cases of which there is no official Spanish translation available. I believe that the U.S. Attorney's Office will oppose the use of Spanish in the totality of their civil cases. Since the Government, with some exceptions, is to be treated as any other party in legal proceedings, the need to choose the language "in the interest of justice" would be an automatic concomitant of civil cases involving the Federal Government as a party.

I will illustrate with an example: From April 1, 1979, to March 31, 1980, there were 2,981 civil filings and 352 criminal filings in our court. Out of these, cases filed by social security claimants against the Secretary of Health, Education, and Welfare numbered 370, that is, 12.4 percent of civil filings for that period.[1] The vast majority of these actions is filed by indigent plaintiffs with lack of sufficient knowledge of English, who would, needless to say, prefer Spanish in their cases. All of these cases involve transcripts of the administrative proceedings which might average 150 pages and which are in English. These transcripts are part of the case file, although filed separately, and are indispensable to decide these cases. Additionally, legal memoranda in almost all such cases is prepared for the government by the Office of the General Counsel of Health, Education, and Welfare in Washington, in English. Translation of this mass of documents would be, to say the least, a colossal task for either the U.S. Attorney's Office or the district court.

On the other hand, if the court decided "in the interest of justice" that English is to be used in such cases, we would in fact be discriminating against the largest mass of solely Spanish-speaking litigants that come to our court.

Again must I state that the lack of an adequate study leaves this dilemma unsolved.

(7) THE EFFECT ON CIVIL AND CRIMINAL PROCEDURE

Another area that seems to have lacked proper investigation is the effect of H.R. 5563 on the intricate scheme of the Rules of Federal Procedure.

In criminal proceedings, defendants are frequently jointly indicted and tried, for multiple reasons of law and convenience. Motions for severance under rule 14 of the Federal Rules of Criminal Procedure are common in such instances. Usually, such motions are denied if the court determines that defendants are not prejudiced by such joinder. Passage of the bill would arguably imply that a new ground for severance would be the defendants' inability to agree on the choice of language. This could become part of the new "language tactics" for criminal lawyers.

Regarding the Federal Rules of Civil Procedure, multiple situations would arise, and I explain myself.

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[1] Clerk's office projections of personnel data.

Let us suppose that I decide that the "interests of justice" require the use of Spanish in a given case; well after the case has started, and several pleadings have been filed in Spanish, a defendant brings a third-party defendant under rule 14. The inclusion of such new party, and the nature of the new causes of action thereagainst might arguably require "in the interests of justice" to switch back to English. Such party could be prejudiced if the case were continued in Spanish, especially if such language had been stipulated by the other parties to the suit. On the other hand, a change of language in the middle of a case would not only appear impractical, but meet the opposition of the parites originally favoring Spanish in said suit. Language would become an obstacle to the speedy implementation of the Federal Rules of Civil Procedure. This example could very well arise not only with third-party practice, but with intervention of new parties under rule 24, inclusion of necessary or indispensable parties under rule 19 or interpleaders under rule 22.

This proposed legislation could not only proliferate disputes regarding inclusion of new parties or causes of action once the cases are underway, but would also affect discovery proceedings such as in-trial subpenas under rule 45. Obviously, a solely Spanish-speaking juror will not understand documents drafted in English and brought to open court pursuant to a subpena duces tecum. Likewise, vacated default judgments under rule 55 might have to be translated, as the appearance of the defaulted party might require a change in the choice of language. Furthermore, cases which would be proper subjects of consolidation under rule 42 would have to pass the language gantlet. Again, situations which could arise are legion, and not one single professional investigation as to the impact of this proposed legislation has been made.

Honorable Senators, I must be candid in stating that it is difficult for me to understand how an admittedly complicated enterprise such as creating the first bilingual court jurisdiction in the history of the United States has been undertaken without one single piece of pertinent statistical information or analysis elicited by a comprehensive scientific inquiry into the procedural and administrative effects of such legislation. Of course, there has been much praisable concern by Congress over the effects and impact of this bill. Various hearings have been held and many speakers have been heard. The House Subcommittee on Civil and Constitutional Rights has always expressed its interest that the bill meet the needs of both the Puerto Rican community and our district court. However, I believe that a more thorough compilation of statistics and professional analysis is required to reach such laudable goals.

I now wish to turn into the area of costs. Now, I have no opinion as to whether this legislation would be costly or not. Budgetary policy is for Congress alone to determine, and I would be obviously underqualified to express an opinion as to this point. It is my duty as chief judge of the U.S. District Court for Puerto Rico, however, to convey to you as energetically as possible, that passage of this legislation without an adequate concomitant budgetary appropriation would create an unprecedented quandary in the Federal judicial system in Puerto Rico.

Let me give you a brief historical background. Our district court is located in the U.S. Post Office and Courthouse Building in Old San Juan. The court occupies most of this building. Some time ago, construction of the new court facilities in Hato Rey was concluded. The new courthouse was obsolete by the time it was finished because among other things, Congress had created four new judgeships. At this moment, reconstruction is scheduled to start in the new courthouse so as to accommodate the additional judges and their staffs. The considerable projected increase in the Clerk's Office personnel requires that the same be moved to the adjoining facilities of the Federal building, together with other court dependencies. Completion of such project is expected for calendar year 1985.

In the meantime, some appointments of necessary court personnel are being withheld for lack of space and facilities. In other words, we are so overcrowded in our present facilities that we are utilizing every single available space to accommodate personnel. Passage of the bill as proposed would lunge an influx of additional personnel creating a problem of Malthusian proportions in our court, with no foreseeable short-term solution short of renting available private space from the surroundings with the obvious inconveniences that this would occasion. Long-term solutions would require revamping the present prospectus of reconstruction for the new courthouse, with the ensuing delay.

This brings me to what I consider the most alarming part of the House report on this bill—the cost estimate. The House Committee on the Judiciary adopted the Congressional Budget Office Cost Estimate with reservations, noting that the

figures provided by the Administrative Office of the U.S. Courts appeared to be inflated. Although I have no copy of such figures, it appears to me that the estimate provided by the CBO is not only conservative, but unrealistic.

I must emphasize the following: It is undisputed that passage of the bill will bring a substantial amount of new filings in cases with concurrent jurisdiction which are presently filed in local Puerto Rican courts. How large an amount, is impossible to predict. Nevertheless, conservative speculations have estimated well over 1,000 additional yearly filings.[6] Based on the formula used by the Administrative office,[7] this would mean approximately 12 to 15 new employees. This includes docket clerks, counter clerks, filing clerks and jury clerks. Taking the JS grade 5 salary as an average, this would amount to an additional $150,000 per annum. This figure could soar up depending on the actual increase of filings accountable to the act. This is contemplated in neither the Administrative Office figures or the CBO cost estimates.

Moreover, although the House report considers a JS–11 pay scale for translators as rather high on an average, it is important to note that our main problem with translators and interpreters in the past has been a rather large turnover rate, largely accountable to the fact that these employees were being underpaid. Most of them have graduate degrees or are on their way to obtaining them. Needless to say, passage of the bill would increase the need for proficient translators, as the language in legal matters requires sufficient expertise so as to avoid potentially costly mistakes. Taking this into account, I believe it is reasonable to set JS–11 as an appropriate average scale for certified translators. Furthermore, although the House Committee believed that the AO estimate of 50 new translators was somewhat exaggerated, I invite you to reconsider in the light of the factors mentioned by me today.

I also invite you to take into account an item which appears to have been totally neglected in the CBO cost estimate. This is the costs for additional personnel, space and facilities for the bankruptcy court, the U.S. attorney's office and the U.S. Probation Office. As stated before, these agencies will require the hiring of translators, secretaries and related personnel with the accompanying space and facilities if they are to comply with the demands of the act. An adequate budgetary assignment would be essential to proper implementation for such agencies. The necessary cost estimate is lacking and again, a cost study or statistical sampling would be of great help.

Regarding court reporters, it is important to note that Spanish stenography is wholly different from English stenography. Mainly for this reason there are no court reporters in our island trained to transcribe in both languages. Therefore, the proposed legislation would require the existence of a permanent stand-by force of additional court reporters inasmuch as various judges may be holding trials in Spanish or in English at the same time. The use of recording devices as an alternative has proved unsound and could only serve as a backup to stenographic reporting.

Finally, the CBO cost estimate assumes that most lengthy civil cases requiring time-consuming translations for appellate purposes will be conducted in English. Although this would undoubtedly be the ideal situation, I must observe that the complexity of a case and the likelihood of appeal are not always apparent at the incipient stages of the proceeding. Likewise, the voluminosity of a case file is not necessarily proportional to the complexity of the causes of action pleaded in the complaint. Therefore, in many instances the proper language choice would only become apparent after some time has transpired from the commencement of the action and various pleadings have been filed.

Mr. Chairman, members of the subcommittee, I beg your pardon if I have repeated myself on the need for a study or on my request that the cost estimate be revised. I am well aware that a lot of thought and reflection has been given to this legislation. Its underlying policies are unquestionably worthy of praise. As a Federal judge, I myself have strived for over 7 years to assure due process for all Puerto Ricans. As a matter of fact, this is what I get paid for. I am honestly concerned, however, that this bill will too often delay and hamper the proper administration of justice and seriously jeopardize our court system in Puerto Rico. A pilot plan, as suggested by various prior deponents, could well answer all our queries and serve as a basis for a more complete legislation which would fulfill the original policies, and at the same time assure the expedient impartation

[6] Ms. Garsh's Supplemental Memorandum of Apr. 11, 1979.
[7] One person per every 100 cases.

of justice in our island. A most illustrative statement on this respect was made by Chief Judge Coffin of the first circuit on August 9, 1978, I suggest reference to the same, as I find it very valuable.

Thank you very much for your attention. Mr. Chairman, I have just found out that although sent by express mail, the final copies of my prepared statement did not arrive on time. I'm sorry for any inconveniences this may have brought. I request permission from the subcommittee to submit copies of my statement in the next days. Thank you again.

Senator DECONCINI. We shall take a very short break at this time
[A brief recess was taken.]
Senator DECONCINI. The committee will reconvene.
The panel will next hear from Mr. Julius Kaplan and Etilvia Arjona. We are very pleased to have both of you here.
Mr. Kaplan, if you would lead off.

STATEMENTS OF ETILVIA ARJONA, FORMER DIRECTOR, MONTEREY INSTITUTE OF LANGUAGE STUDIES, AND JULIUS KAPLAN, ATTORNEY

Mr. KAPLAN. I am Julius Kaplan. I am a partner in the law firm of Kirkwood, Kaplan, Russin & Vecchi. Our firm has offices in Asia, Latin America, Europe, and the United States.

We frequently represent foreign parties involved in litigation and arbitration in the United States and Americans and others in litigation abroad. Virtually all of our litigation is in civil and commercial matters.

As a consequence we frequently use translators. Inasmuch as two of our offices are in Latin America, we have had experience with translations from English into Spanish and vice versa. I have been requested by the Judicial Conference of the United States to offer my comments on H.R. 5563.

It should be noted at the outset that my firm does not have an office in Puerto Rico. Indeed, we have to my knowledge never litigated there. Thus, we have no direct interest in the proposed legislation. I appear here solely to provide the subcommittee with the benefit of our experience.

Moreover, I limit my testimony to comments upon the following sentence in H.R. 5563:

> If an appeal is taken of a trial or proceeding conducted in whole or part in the Spanish language, the record or necessary portions of it, shall be translated into the English language, unless the appellate court directs otherwise.

I am advised that there have been statements made to the effect that the making of translations of the record for purposes of appeal should not present any significant problems.

I have personally encountered difficulties whenever I have had to work with translations. This problem becomes all the more exaggerated when one deals with technical documents which make up a great deal of today's international trade in commerce.

In theory one could believe that anything written or said in one language could be accurately translated into another language without great to-do. This theoretical premise frequently falls short in practice. It is, in my experience, a rare instance when one can find a word in a foreign language which has the direct equivalent in English, an

equivalent which carries with it the same social, intellectual, and economic nuances in both languages.

If the proposed legislation is enacted I believe that care must be taken that extremely skilled translators be selected and that adequate and realistic budgets be provided for this purpose. One should, indeed, seriously consider a program for certifying translators for this purpose as part of the implementation of the legislation.

In conclusion, it is my belief that if translations would ultimately be required one must reasonably anticipate difficult and costly problems. Whether these problems outweigh the social benefits sought through the proposed legislation is a question beyond the scope of my testimony.

Thank you.

Senator DECONCINI. Mr. Kaplan, if you do not mind my asking a question based on your experience in Latin America.

Do you agree there would be some social advantage from the standpoint of the United States relations with Latin America through such legislation?

Mr. KAPLAN. Mr. Chairman, I do not profess to be a sociologist and I do not even profess to have much knowledge about Puerto Rico. Indeed, I have been there only a few times.

However, I have had enough dealings with persons living in foreign countries to understand and appreciate the great pride, and realistically the justifiable pride, they have in their language, and the feeling that any requirement to work in a foreign language is a burden sometimes unfairly imposed upon them.

Therefore, I would surmise, again based on just general experience, that the social benefits to be derived through this legislation are probably substantial.

Senator DECONCINI. And I take it to be substantial in the sense of not just Puerto Rico but perhaps extending beyond that?

Mr. KAPLAN. If you mean whether the United States would gain in its image through showing other countries in Latin America that you are sufficiently sensitive to this question and you have enacted this legislation, I might say I would completely concur with the conclusion that it would have a definite salutary benefit in terms of our relations with other Spanish-speaking countries in Latin America.

Senator DECONCINI. Your testimony talks about the technical problems and the results of those translations. Would you think primarily that would occur on the appeal, when you were translating back into English, or do you think that occurs in the actual trial?

Mr. KAPLAN. There are possibilities that they are occurring right at this very moment in the course of the trial. I have had relatively little experience in that area, and I would imagine from the Puerto Rican lawyers I know that if they did not feel an accurate translation was being made, or an accurate interpretation of the testimony, they then would be afforded an immediate opportunity to clarify their question or reask it in a certain way.

That opportunity, of course, would not be afforded in the case of translations which would not appear until hours, at best, but more likely days, weeks, or even months after the trial.

Senator DECONCINI. Thank you, Mr. Kaplan. I am pleased you were able to appear here today. We thank you and the Judicial Conference.

Ms. Arjona, we will be pleased now to hear you. If you have a full statement we will insert it in the record at the conclusion of your testimony.

Ms. ARJONA. I would like to put my statement into the record. Thank you. My credentials are in my written statement as a professional translator and interpreter.

I am in support of H.R. 5563, which provides that certain judicial pleadings and proceedings in the Commonwealth of Puerto Rico may be conducted in the Spanish language, for the following reasons:

First and foremost, because the legislation recognizes Spanish as the language of the people of Puerto Rico, and in so doing constitutes their natural means of communication. However, any translator or professional interpreter will recognize that given a choice unilingual communication involves less possibility of miscommunication than when two languages are used.

I do have some major reservations regarding this bill. They are rooted in whether this legislation will provide for both a certification process and a court interpretation program which will allow for the necessary standards to be set, whether the needed fiscal support is given, and whether the means to carry out needed recruitment of personnel is adequately envisioned and accounted for in the planning for this legislation.

I would like to address four broad areas of concern. First, there is the matter of the resources required to adequately provide for adequate and rapid translation of legal proceedings and documents. Producing a translation can be said to be dependent upon three factors: (1) skill as a translator, (2) resources available to the translator, and (3) limitations of human capability.

Proficiency as a translator can be optimized by both training and work experience. However, the translator is limited in the amount of finished text that he or she can produce by the constraints imposed by his/her human condition and by the present degree of sophistication of the support service needed by the translator.

Speed of translation is subject to a wide variation of individual differences and the fact that the translator is, after all, a very human processor of information is something which users of translation services often overlook in the interest of economy and/or urgency. Here, I would like to respectfully take exception to Congressman Corrada's statement about the possibility of starting translating while the proceedings are taking place. For many technical reasons this is not possible—but, above all, because the matter of professionalism will be in question.

In budgeting for a translation services unit, careful estimates of the translator's productivity, and of the support services needed, then, must be carried out.

A second broad area of concern has to do with the quality of personnel and the training, experience, and skills required of professional translators. Underlying my remarks is the assumption that the legislation will provide adequate fiscal and operational support for the creation and continued existence of the mechanisms needed to carry out its mandate. In my view, the success of this legislation is dependent upon the certification process for which it provides. If the legislation

allows for the use of Spanish in the courts, then it behooves the Congress to stipulate the process which would allow for the necessary standards to be established.

Within the profession, certification can be obtained in three ways. The first is academic certification as gained through credit accrual in a course, workshop, seminar, or program of study. A second method is by examination, as administered by an international body, such as the U.N. or the O.A.S.; by a governmental organization, such as the State Department; by private agencies, such as banks, multinational corporations or translation agencies which require the services of translators. Accreditation by professional associations or professional certification services, such as those advertised within the profession by A.T.A., American Translators Association, and N.T.C.S., National Translator Certification Service, is a third method of certification.

I am emphasizing the certification and internships aspects because I strongly believe that only through such a structure can the legislation be made functional and operational. At present, anyone can bill himself or herself as a translator, and the range of linguistic competence in the profession covers the possible spectrum. Such free access to the profession can only result in a range of quality that not only covers the possible spectrum, but defies the imagination.

There is no common set of definitive standards for professional translator accreditation or for assessment of a translation. As I mentioned before, anyone can bill himself or herself as a translator. Perhaps the best example of the state of the art is the requirement which the Immigration and Naturalization Service spells out for submission of documentation requiring translation into English to this body. In the instructions for the completion of the MA 7–50–A form, rule 5, item d, Rules for Documents, it states:

> Documentation not in the English language must be accompanied by a translation, certified by the translator as to the accuracy of the translation and his competency to translate.

I have been linking a court internship program to the certification process. In my view, this is necessary to insure adequate translation services for the courts. I strongly believe that completion of a well-defined curriculum should be the principal avenue for entrance into the profession. I do not consider it the only avenue possible, however. This is especially so in a case such as the one addressed by this legislation in which the work domain is clearly specified.

Given that a person qualifies for work in the courts through a certification examination, additional training needs to be institutionalized in order to insure standardization. Because of the foregoing, I believe an internship program should be mandatory for all those certified translators offering services to the court on a full time or on a contractual basis. This will take time, considerable time.

When discussing the skills needed by a translator. I believe that some very important considerations have to be borne in mind. It is an established fact that knowledge of a language—of one's mother tongue, for example—does not *ipso facto* imply a given level of writing or oratorial skill. By extension, knowledge of more than one language, at whatever level of proficiency, does not imply the ability to write effectively in those languages. This is certainly the case when we consider native language abilities.

A translator, however, works with two language systems and is, above all, two things, a writer and an intercultural communicator.

A translator's goal is to carry the intent and meaning of the original text over the cultural and linguistic bridge and overcome the gap separating the source text from the target audience.

To the layman, this type of work can easily be carried out by anyone who knows the two languages involved. Experience and research, however, have shown this not to be the case. Nor is it the case that one and the same person functioning as both a translator and an interpreter can do so with equal competence.

To find someone who is equally proficient as a translator and as an interpreter is a rare occurrence, since this requires the combination of linguistic, literary skills in two modes—the oral and the written—in at least two languages. People are usually better at one than the other. However, translating and interpreting are both equally demanding tasks, should have equal remuneration, and equal status. At present a simultaneous interpreter earns $210 a day plus per diem. Equal remuneration for translators will mean considerable cost in order to implement this bill.

A third broad area of concern has to do with the administrative problems which can be anticipated in projecting development of the translation program proposed in this bill within 18 months. They are considerable, and, in my opinion, this time limit is not realistic.

I would like to stress here an area of special concern to me. The Court Interpreters Act mandated a certification examination for interpreters. It has, to a great extent, paved the way for a model that can be used for certification processes. However, in contrast to the complex organizational demands necessitated by H.R. 5563, the Court Interpreters Act addressed itself solely to a certification process. Certification is but one of several organizational tasks that need to be put into operation in order to comply with the mandates of H.R. 5563.

For the past 7 months, I have been working with the group appointed to develop the court interpretation test. At this time, the testing instrument has been developed, and we anticipate finishing with the final testing of candidates within the next 6 weeks. I share this with you to give you some indication of the time frame needed just for the development of a psychometrically valid and reliable instrument.

As mentioned before, the design of a translation services unit, in my opinion, involves going beyond the mere development of a certification instrument. I am confident that an adequate number of translators can be examined within the United States and can qualify for certification—provided that adequate compensation is offered. We must bear in mind that recruitment of qualified personnel within the United States and Puerto Rico will not be easy.

This legislation is being passed to help the people of the Commonwealth to better cope with the language problem they face in having to operate within two language systems in given situations. We must bear in mind that it is in their interests that the best translation services unit possible be structured. The statistical breakdown provided in the Edwards report leads one to assume that English will be the target language in the majority of cases where certified translators will be needed.

A fourth broad area of concern is the likelihood of challenges to translation accuracy. Some people half jokingly say that were 12 translators to be put to the task of translating any given document, at least 15 versions would result. I do not intend to question the fact that any translation is open to discussion, to debate, and to variation. The very fact that individual differences exist and, therefore, each individual has his or her own writing style and way of processing information, means that there will be differences between two versions made by that same individual, as well as differences between two versions made by two different translators.

Despite this, if the conveyance of meaning so that the message of the original text is meaningful to the members of the target cultural and linguistic group is the goal, a bandwidth of acceptability can be established. The goal of any professional certification program is to identify those who are capable of performing within such a bandwidth and who, therefore, conform to the accepted standards. I believe that both at the personal and the collective level, as well as at the document level, this bandwidth can be defined with the desired precision. This is especially so in a well-defined domain such as court translation.

Greater debate will occur in that part of the court proceedings which focus on cultural norms and on the vernacular. However, here again the legislation addresses a well-defined linguistic subculture which may make the issue more manageable. However, the impact this can have on the court processes cannot be dismissed, or can its implications be ignored in debating this legislation.

Throughout my report, I have tried to warn against the negative effects that equating interpretation and translation can bring; also, against the establishment of a "second-class" status for court translators. The Senators should bear in mind that the recruitment of personnel for a translation services unit such as the one contemplated by this legislation will not be an easy task. In addition, it seems to me that the deciding criterion here is professionalism, and it applies equally to translation and to interpretation.

The prestige enjoyed by the interpretation profession has its roots in the very dramatic events that highlighted its birth in modern times. The Nuremberg Trials, charged with bridging the communications barrier under such life-and-death circumstances, provided the nascent interpretation profession, from the very beginning, with the respect it unquestionably deserves. This translates into status and a relatively high standard of remuneration. This H.R. 5563 legislation highlights the court translator's responsibility. Translator and interpreter alike have to bridge the language barrier with equal professionalism, with equal accuracy, and with equal responsibility. One profession should not be the poor relation of the other.

In concluding, I would like to say how pleased I am that the U.S. Congress is addressing the very important issue of professional translation services in the courts of Puerto Rico. This legislation can be precedent setting not only because it will allow Spanish to be used in the Federal courts of Puerto Rico. It contains the basis for structuring models that can have an impact beyond the territorial confines of the Commonwealth.

In closing, I would like to reiterate my endorsement of H.R. 5563, provided that the necessary support is given to the agencies charged

with its implementation. The whole process needed is complex, costly, and time consuming. Whether such an endeavor is worth the price tag required is up to the Congress to decide.

I thank you for the opportunity to state my views and am available for further elaboration.

Senator DECONCINI. Some of the cost estimates that we have available indicate that it would cost somewhere in the neighborhood of $2.5 million to implement this program, both in civil and criminal areas. What do you think of the figure? Do you have any idea as to what you believe the cost might be?

Ms. ARJONA. I do not have an exact figure. However, I do know it will be a very costly endeavor because not only of the number of translators there will be needed, reviewers, support staff, and additional court services, but——

Senator DECONCINI. I think Judge Pesquera indicated some 110 district cases in the Federal court, 15 criminal trials, and I do not recall the number of civil trials. However, if you have 15 appeals, let us say, what kind of expertise would it take and what manpower would it take to accomplish the task, if you can give an average number?

Ms. ARJONA. The average number of pages or words?

Senator DECONCINI. Number of pages requiring translation was 112,000 and the number of man-years required to translate that was 51, for a total first year cost of $2,883,000.

However, if you had a number of pages, say 112,000 pages requiring translation, is there any way to compute what you believe that would take in personnel?

Ms. ARJONA. I know a very good translator translates at an average of 9 to 10 pages per day. That encompasses about 250 words per page. It would come very close to what?

Senator DECONCINI. Your testimony is that this would take a particular process to set up and establish to the point where you have properly competent translators. Can that be implemented without a great deal of problems?

Ms. ARJONA. No.

Senator DECONCINI. Would you have to have schooling and training for them or are they available now?

Ms. ARJONA. They may be available. You would have to have a certification process established in order to set the standards. I think the courts would be well advised to then set up an in-house training program so that standards of the courts will be the way that translation unit will function. This will take considerable time even after the certification process, which in itself takes considerable time.

I estimate it will be 9 to 10 months just to carry out the testing. Creating a translation services unit is a very complex matter.

Senator DECONCINI. Have you been involved at all, Ms. Arjona, in the Court Bilingual Act we passed?

Ms. ARJONA. Yes, sir. From the very beginning I have been working with the group to develop the test, and only the test. We have been working for over 7 months now.

Senator DECONCINI. How is that proceeding?

Ms. ARJONA. Fine. We hope to start testing and finish testing the candidates who pass the first part within 6 weeks.

Senator DECONCINI. What kinds of results did you have on the first part? Do you recall?

Ms. ARJONA. I think Mr. Leeth can give you the exact figures 1,500 candidates took the examination.

Senator DECONCINI. Mr. Leeth?

Mr. LEETH. 1,500-plus people took the examination and 400 passed the examination, which is the first part of a two-part series of tests for interpreters.

Senator DECONCINI. Those who will pass will take the second part?

Mr. LEETH. Yes, sir, the oral part. Those who have language skills and do the interpretation will be involved.

Senator DECONCINI. That is a rather low percentage, is it not?

Ms. ARJONA. I personally think it is a very good percentage.

Senator DECONCINI. Based on your experience?

Ms. ARJONA. Yes. In training translators we get a very large number entering schools, for example, and very few make it as translators or as interpreters, perhaps 10 percent. The percentage obtained from testing in the United States and which passed is high.

They have just passed the written part. The oral part will be another matter. As I said in my testimony, it is one thing to know the two languages but a totally different thing to know how to translate. It is one thing to do it in written form and something else to interpret orally.

Senator DECONCINI. Thank you very much for your testimony. You have been very helpful.

[The prepared statement of Ms. Arjona follows:]

PREPARED STATEMENT OF MS. ETILVIA ARJONA

I have been a professional translator for twenty years, and have worked as a free-lancer, an in-house translator and conference interpreter in Switzerland and, in Panama, as the owner of a translation bureau. I am a certified public translator and interpreter in the Republic of Panama. I am a graduate of the School of Interpreters of the University of Geneva, Switzerland. For the past 10 years, I have been involved in teacher education, translator and interpreter training, and consultantships with governments and institutions on curriculum design and program administration. As chairman of the Department of Translation and Interpretation of the Monterey Institute of International Studies, I designed and developed its curricula in translation, interpretation and joint professional programs.

As requested by the Administrative Office of the U.S. Courts, I will limit my remarks to the topics proposed to me. I am, however, available for further comment on any matter which the senators may deem necessary.

I am in support of H.R. 5563, which provides that certain judicial pleadings and proceedings in the Commonwealth of Puerto Rico may be conducted in the Spanish language, for the following three reasons:

First of all, the legislation recognizes Spanish as the language of the people of Puerto Rico and in so doing, that it constitutes their natural means of communication. In providing for Spanish as a language for possible use in the courts, H.R. 5563 allows for the bulk of proceedings to be carried out in a linguistic setting that minimizes miscommunication. Research has proven that interpersonal communication is a highly complex endeavor. This complexity is compounded whenever an additional barrier to the communication process is brought into play. The introduction of another language into any such situation, then, greatly increases the possibility of miscommunication. Although the Court Interpreters Act addresses the matter of adequate interpretation services in the U.S. courts, any professional translator or interpreter will agree that, given a choice, unilingual communication involves less possibility of miscommunication than when two languages are used. In allowing for the use of Spanish, this legislation serves to insure that justice will

be better served by making it possible for proceedings to take place under conditions that are natural to the people of the Commonwealth. The Edwards report offers a statistical analysis of the linguistic situation in Puerto Rico which highlights not only the fact that the great majority of the people there are native speakers of Spanish, but also that the legislation would open participation in the business of the courts to all Puerto Ricans and not just those who have a sufficient knowledge of the English language.

In the second place, the legislation provides for flexibility in decision making when choosing the appropriate language for a given case. The fact that this legislation, under various circumstances, empowers the parties involved and/or the court to make that determination ensures the needed flexibility.

In the third place, the legislation stipulates that the costs of translation are to be borne by the district court. This provision ensures that such costs will not be a determining factor when the choice of language arises.

However, I do have some reservations regarding this bill. They are rooted in whether this legislation will provide for both a certification process and a court internship program that will allow for the necessary standards to be set and, above all, whether the needed fiscal support to ensure all this is given.

I would like to address four broad areas of concern. First, there is the matter of the resources required to adequately provide accurate and rapid translation of legal proceedings and documents. Producing a translation can be said to be dependent upon three factors: (1) skill as a translator, (2) resources available to the translator, and (3) limitations of human capability. Proficiency as a translator can be optimised by both training and work experience. However, the translator is limited in the amount of finished text that he or she can produce by the constraints imposed by his/her human condition and by the present degree of sophistication of the support services needed by the translator. Support services, then, play a limiting role in productivity. Also, depending on their type, they impose, in turn, their own limitations on the productivity level the translator can hope to achieve. These support services can be of two types: (1) those pertaining to personnel, such as proofreaders, secretaries, reviewers and research assistants; and (2) those pertaining to hardware—which can either be documents (such as dictionaries, terminology banks and reference materials) or equipment (such as data processing or dictating equipment and microcomputers for storage and retrieval of information). In addition, we can count physical facilities as part of the support services needed by a translator, since adequate administrative and working space needs to be provided to insure the isolation and freedom from interruption required for the scholarly type of work that is characteristic of translation.

Another factor which must be given careful consideration is the fact that the translator is, after all, a very human processor of information. This is something which users of translation services sometimes overlook in the interest of economy and/or urgency.

Speed of translation is subject to a wide variation of individual differences. I have known translators who claim a daily output of 8 to over 50 pages, or the equivalent number of words. My own experience is that 9–12 pages a day is a good estimate to use, especially if the whole process from translator to printing is taken into consideration.

A second broad area of concern has to do with the quality of personnel and the training, experience, and skills required of professional translators. Here the matter of certification standards stands out as one of prime importance. Underlying my remarks is the assumption that the legislation will provide adequate fiscal and operational support for the creation and continued existence of the mechanisms needed to carry out its mandate. In my view, the success of this legislation is dependent upon the certification process for which it provides. If the legislation allows for the use of Spanish in the courts, then it behooves the Congress to stipulate the process which would allow for the necessary standards to be established. Thus, translation standards can be set and the necessary certification instruments and court internships can be developed.

I am emphasising the certification and internships aspects because I strongly believe that only through such a structure can the legislation be made functional and operational. At present, anyone can bill himself or herself as a translator, and the range of linguistic competence in the profession covers the possible spectrum. Such free access to the profession can only result in a range of quality that not only covers the possible spectrum, but defies the imagination. I am a professional translator because I was trained in a school of interpreters in an institution of

higher education where the curriculum had been designed to train professionals in the field who would then service the translation and interpretation needs of international organizations, multinational companies and of the international communication world of the postwar era. I do not want to imply that only such training can qualify a person as a professional translator, for I believe that the interests of a given body needing translation services are best served by establishing its own certification process. By so doing, it ensures that its needs are met within its own defined band-width of acceptability.

Within the profession, certification can be obtained in three ways. The first is academic certification as gained through credit accrual in a course, workshop, seminar, or program of study. A second method is by examination, as administered by an international body, such as the U.N. or the O.A.S.; by a governmental organization, such as the State Department; by private agencies, such as banks, multinational corporations or translation agencies which require the services of translators. Accreditation by professional associations or professional certification services, such as those advertised within the profession by A.T.A. (American Translators Association) and N.T.C.S. (National Translator Certification Service) is a third method of certification.

Since Dr. Eugene Nida will also testify before this committee, I will not include a description of the strictly defined procedures used by various religious bodies which have their own in-house translation services.

Certification by the bodies which I am discussing in this report is based upon expert testimony by a panel of reviewers. If the candidate meets the subjective criteria of the reviewers, he or she is granted a degree, given a job, placed on a registry or working file, or is awarded a certificate, as the case may be. Commonly accepted criteria are used. For example, a specified number of mistakes in meaning, grammar, syntax, etc., constitute failure. These criteria are tradition based and subject to individual panel interpretation and variation. There is no common set of definitive standards for professional translator accreditation or for assessment of a translation. As I mentioned before, anyone can bill himself or herself as a translator. Perhaps the best example of the state of the art is the requirements which the I.N.S. spells out for submission of documentation requiring translation into English. In the instructions for the completion of the MA-7-50 A form of the I.N.S., rule 5, item d, Rules for Documents, it states: "Documentation not in the English language must be accompanied by a translation, certified by the translator as to the accuracy of the translation and his competency to translate."

Certification should be based upon a set of criteria for mastery which are known to the potential translator, training institutions, the general public, and the agencies contracting such translation services. In the Edwards report, joint participation of the Administrative Office of the U.S. Courts, the Federal District of Puerto Rico and the University of Puerto Rico's Graduate School of Translation is recommended. In outlining such a program of action, this legislation opens the door to the design and implementation of a model program where certification of translators can be based upon multiple validated criteria rather than individual subjective or impressionistic judgments.

I have been linking a court internship program to the certification process. In my view, this is necessary to insure adequate translation services for the courts. I strongly believe that completion of a well-defined curriculum should be the principal avenue for entrance into the profession. I do not consider it the only avenue possible, however. This is especially so in a case, such as the one addressed by this legislation, in which the work domain is clearly specified. Given that a person qualifies for work in the courts through a certification examination, additional training needs to be institutionalized in order to ensure standardization. Because of the foregoing, I believe an internship type of training program should be mandatory for all those certified translators offering their services to the court on a full-time or on a contractual basis.

Insofar as experience and skills needed by a translator are concerned, I do not feel that experience is a primary indicator of expertise or of skill. The mere fact that a person has 20 years of experience in a given field does not, in my view, imply a given level of mastery. However, when experience is coupled with mastery of the field, it constitutes an undeniable asset.

When discussing the skills needed by a translator, I believe that some very important considerations have to be borne in mind. It is an established fact that knowledge of a language—of one's mother language, for example—does not ipso facto imply a given level of writing or oratorical skill. By extension, knowledge

of more than one language (at whatever level of proficiency) does not imply the ability to write effectively in those languages. This is certainly the case when we consider native language abilities. A translator, however, works with two language systems and is, above all, two things: a writer and an intercultural communicator. He or she has to be an effective writer, an accomplished semanticist, a terminologist and a sensitive communicator. A translator's goal is to carry the intent and meaning of the original text over the cultural and linguistic bridge and overcome the gap separating the source text from the target audience. To the layman, this type of work can easily be carried out by anyone who knows the two languages involved. Experience and research, however, have shown this not to be the case. Nor is it the case that one and the same person functioning as both a translator and an interpreter can do so with equal competence. To find someone who is equally proficient as a translator and as an interpreter is a rare occurrence, since this requires the combination of linguistic, literary skills in two modes—the oral and the written—in at least two languages. People are usually better at one than the other. However, translating and interpreting are both equally demanding tasks, should have equal remuneration and equal status.

A third broad area of concern has to do with the administrative problems which can be anticipated in projecting development of the translation program proposed in this bill within 18 months. They are considerable. I would like to highlight here an area of special concern to me. The Court Interpreters Act mandated a certification examination for interpreters. This act has, to a great extent, paved the way for a model that can be used for certification processes. In contrast to the complex organisational demands necessitated by H.R. 5563, the Court Interpreters Act addressed itself solely to a certification process. Certification is but one of several organizational tasks that need to be put into operation in order to comply with the mandates of H.R. 5563. In developing the testing instrument to implement the Court Interpreters Act, a multidisciplinary approach in choice of expertise was used. This need is addressed to a certain extent in the Edwards report, where it is recommended that the Director of the Administrative Office of the U.S. Courts, the Federal District of Puerto Rico, and the Graduate School of Translation of the University of Puerto Rico jointly work to develop the criteria needed for certification.

However, developing the testing instrument is but one of the several organizational tasks needed to carry out the mandates of the translation services bill. For the last 7 months, I have been working with the group appointed to develop the court interpretation test. At this time, the testing instrument has been developed, and we anticipate finishing with the final testing of candidates within the next 6 weeks. I share this with you to give you some indication of the time frame needed just for the development of a psychometrically valid and reliable instrument.

As mentioned before, the design of a translation services unit, in my opinion, involves going beyond the mere development of a certification instrument. I am confident that an adequate number of translators can be examined within the United States and can qualify for certification, provided that adequate compensation is offered.

This legislation is being passed to help the people of the Commonwealth to better cope with the language problem they face in having to operate within two language systems in given situations. We must bear in mind that it is in their interests that the best translation services unit be structured. The statistical breakdown provided in the Edwards report leads one to assume that English will be the target language in the majority of cases where certified translators will be needed. In my opinion, this situation calls for support of adequate translation training programs in the United States and especially in Puerto Rico in order to insure the long-term success of a translation services unit such as the one contemplated in this legislation.

A fourth broad area of concern is the likelihood of challenges to translation accuracy. In addressing this issue, I cannot resist citing a well-known expression within the profession; that is, traduttore, traditore—translator, traitor. This is a common cry heard from anyone who wants to make a case for the impossibility of translating a text from one language to another—or, for that matter, of arriving at any one acceptable version. Some people half jokingly say that were 12 translators to be put to the task of translating any given document, at least 15 versions would result. I do not intend to question the fact that any translation is open to discussion, to debate, and to variation. The very fact that individual differences exist, and therefore, each individual has his or her own writing style and way of

processing information, means that there will be differences between two versions made by that same individual, as well as differences between two versions made by two different translators. Despite this, if the conveyance of meaning so that the message of the original text is transferred to the target version is meaningful to the members of the target cultural and linguistic group, a band-width of acceptability can be established. The goal of any professional certification program is to identify those who are capable of performing within such a band-width and who therefore conform to the accepted standards. I believe that both at the personal and the collective level, as well as at the document level, this band-width can be specified with the desired precision. This is especially so in a well-defined work domain such as court translation. Greater debate will occur in that part of the court proceedings which focus on cultural norms and on the vernacular. However, the fact that this legislation addresses specifically Puerto Rico's unique situation and that here again we have a well-defined linguistic subculture, does in fact make this latter issue more manageable.

I would now like to address myself to the report made by Mr. Edwards of California from the Committee on the Judiciary, and point out certain places where I believe some clarification is in order.

1. *Ref: Page 7, lines 14–32, first full paragraph:* "Caution: The fact that the University of Puerto Rico's School of Translation trains their students in both translation and interpretation is good, since both are communicators and therefore share certain common concerns. However, it is not wise to assume that all interpreters can translate or that all translators can interpret. We must, from the very beginning, perceive the language services needed by the courts as consisting of two parts: the need for a court translation services unit, and the need for a court interpretation unit. Blending the two concepts can only spell trouble."

2. *Ref: Page 7, lines 52–53; page 8, lines 1–3:* "One additional factor that must be considered in setting out to guarantee the professionalism of individuias who serve as translators is that their pay must be commensurate with the professionalism required of them; *this is especially true* with regard to individuals who will serve as both interpreters and translators."

By pointing to the fact "this is especially true" for those who serve as both interpreters and translators, the implication is made that those translators who do not interpret do not necessarily merit such equivalent pay. The deciding criterion here is professionalism, and it applies equally to translation and interpretation. The prestige enjoyed by the interpretation profession has its roots in the very dramatic events that highlighted its birth in modern times: the Nuremberg Trials. Charged with bridging the communication barrier under such life-and-death circumstances provided the nascent interpretation profession, from the very beginning, with the respect it unquestionably deserves. This translates into status and a relatively high standard of remuneration. This legislation highlights the court translator's responsibility. Translator and interpreter alike have to bridge the language barrier with equal professionalism, with equal accuracy, and with equal responsibility. One profession should not be the poor relation of the other.

3. *Ref: Page 9, lines 47–48:* "In this manner, that court may also *phase-in whatever support staff* it will need to administer this legislation once it is finally operational."

As I have pointed out previously, a two-pronged effort will be needed for implementing this legislation. The senators should bear in mind that an operational translation services unit is being created and its needs go beyond just attending to necessary support staff.

4. *Ref: Page 7, lines 39–41:* "It is the committee's intent that, as part of the responsibility, the Director *also* establish a certification process for individuals who act as out-of-court translators."

The Court Interpreters Act required that the Director of the Administrative Office of the U.S. Courts maintain on file in the office of the clerk of the court a list of all persons who have been certified as interpreters. It seems to me that lines 39–41 on page 7 of the Edwards report and, what is more, the entire last paragraph, carry an implied perceptual analogy of interpretation services with translation services. I cannot stress the difference strongly enough. Whereas the courts are able to operate by having interpreters on call, I doubt whether a similar listing of certified translators can be made the basis for implementing H.R. 5563. Although the certification of translators is implicit in the establishment of a translation services unit, a physical operational unit in the courts must be brought into existence in order to meet their needs. Therefore, two things come to mind: one,

the fact that all full-time court translators must be certified, and second, the fact that all certified translators who offer their services to the courts may be required to go through an internship program or its equivalent.

In concluding, I would like to say how pleased I am that the U.S. Congress is addressing the very important issue of professional translation services in the courts of Puerto Rico. In attempting to bridge adequately the gap that separates those who do not share common cultural and linguistic norms, Congress is taking practical steps toward creating better understanding amongst us all. Longstanding disagreements often are based on just linguistic cross talk and misinterpretations between the parties involved. This legislation is precedent setting not only because it will allow for Spanish to be used in the Federal courts of Puerto Rico. If it provides the proper support in order to comply with its mandate, the Congress is making possible the structuring of models that can have an impact beyond the territorial confines of Puerto Rico.

In closing, I would like to reiterate my endorsement of H.R. 5563, provided that the necessary support is given to the agencies charged with its implementation. The whole process needed for implementing this bill is complex, considerable, and time consuming. Whether such an endeavor is worth the price tag required is up to the Congress to decide.

Senator DECONCINI. Our last witness will be Mr. Gallup, clerk of the First Circuit Court of Appeals.

Thank you for being with us today. I also wish you would express our appreciation to the Chief Justice for having you appear before us.

STATEMENT OF DANA H. GALLUP, CLERK, FIRST CIRCUIT COURT OF APPEALS, ACCOMPANIED BY JACK LEETH, DIRECTOR, COURT INTERPRETATION PROGRAM

Mr. GALLUP. I sincerely thank you, Mr. Chairman, as well as the staff for hearing us today. It is indeed a great honor.

I would gather that the chairman is somewhat concerned about the time and would appreciate my cutting back on my remarks, which I will endeavor to do.

First, if I may introduce Mr. Jack Leeth, director of the court interpretation program for the administrative office from whom you heard just a moment ago.

Is my understanding correct, Mr. Chairman, that the statement by Mrs. Nora Lejins, Chief of Language Service, Department of State, and the statement by Chief Judge Coffin, will both be in the record?

Senator DECONCINI. They will be made part of the record as well as your full statement, and as well as any other statement you care to submit after these hearings. We will be glad to keep the record open to be sure we have everything we need.

Mr. GALLUP. Thank you, Mr. Chairman.

I will try to skip through my remarks highlighting the various headings I have had in my presentation. Perhaps it will be easier to follow if I follow them in that order.

Senator DECONCINI. That will be fine.

Mr. GALLUP. And I shall try to make some remarks in light of other remarks I have heard here this morning.

First, I would like to allude to the statement by the Judicial Conference of the United States indicating certain concerns. Rather than bore you with reading it, it is in my statement, I will refer the committee to the statements of the court.

The Judicial Conference of the United States indicates they are not taking any particular stand, but they are concerned about a study which you are very efficiently performing today.

I would like first to make it very clear that my remarks and my material are limited to matters concerning appellate review and deal with concerns to insure appeals in the district courts of Puerto Rico will continue to receive all they are entitled to, and to see the Puerto Ricans get their share of full due process. My concerns are not out of any concern for the convenience of my judges, if I dare say that, or the convenience of my staff. We are interested purely in seeing that Puerto Rican cases get their full justice.

My first concern is the matter of what I call the double delay involved in obtaining the transcripts. I have pointed out some six cases where we have had from 1 year to over 2 years of delay in obtaining the transcripts.

I would point out further there has been testimony this morning about how one could obtain a portion of a transcript and then start translating, the translating being the second stage of the delay.

There are a couple of practical considerations which I did not hear mentioned. First off, the court reporter transcribes the transcript but it never is transcribed in any way until someone places an order for it along with a sufficient deposit to assure the court reporter gets paid for it. Therefore, it is not as though this transcript is getting transcribed the moment the trial starts.

In point of fact, the rules do not require a transcript be ordered until 10 days after the notice of appeal is filed, within that period, so we do not have the capability.

Second, I will remind you that testimony in the previous presentation was made that the translator would not feel he could do it on a piecemeal basis but would have to have it all available.

Again I remind you of the problems we are having with the court reporters in Puerto Rico, waiting sometimes over 2 years to obtain a transcript. This is what I mean by the double delay. The court of appeals obviously cannot proceed to decide the case until they have at least a transcript in almost every case.

A speedy and prompt appeal is part of the due process. We in the appellate level are very concerned about it.

Moving on to my second point concerning the fact that the history of the Supreme Court of Puerto Rico on appeals is not too much help to us, and I will remind you of the three points that I made there.

First, under the old practice—and I am one of the grey-haired old goats that was around when we did it before so I have some practical realization of what is involved—we were running, as Judge Campbell pointed out in his testimony, some 5 to 10 cases a year.

Just to let you know where we stand, before I left the office Friday night I had my staff count up the number of appeals we got in from Puerto Rico. Again this is a raw figure. We docketed from January 1 to May 17, 110 appeals in Puerto Rico alone. Roughly in 4½ months we docketed 110 appeals in Puerto Rico. It is no different, as I see it.

I made the point in my remarks about the scope of review being much more limited in the Supreme Court of Puerto Rico.

Third, I make the point that the urgency of a prompt review in those cases coming to the court of appeals and the Supreme Court of Puerto

Rico were not material because they already had had one appellate review in the Supreme Court of Puerto Rico. It is almost similar, somewhat similar, to the Supreme Court of the United States reviewing the court of appeals. It is one review and they have limited certiorari procedure, not completely analogous but somewhat similar.

Another concern I have is in connection with the so-called recalcitrant witness situation where a witness—and I underline "witness" and not "defendant"—must proceed and testify before a grand jury. We have a case we just docketed now where the witness is in jail and will have to stay in jail until his case can be heard, even though he is not a defendant in the case at all.

If we have to have all of this translation process from the grand jury minutes, it will not do that witness any great favor. The U.S. attorney, as I understand the proposed legislation, would have a choice as to what language he would be tried in.

My fourth point, reviewing orders of the district court concerning denials of bail promptly, I think what I said previously in my remarks covers that.

I will also add that in my written statement I did not press matters on the civil side. Should this legislation be considered to cover civil cases we have all of these emergency stays, injunctions.

Fifth, in connection with a decision to limit this matter to criminal cases, this is of some concern to me. I do not have the answer, frankly, but as you know the habeas corpus cases are considered to be civil cases. The cases under 28 U.S.C. 2255, Collateral Relief from Criminal Convictions, are considered to be civil cases. Are you going to consider these as civil cases or are you going to say they are reviewing a criminal conviction so possibly these in some manner should be treated as criminal cases?

If you will recall that at least under the Criminal Justice Act for the purpose of appointing attorneys, both of these "civil" cases have been treated to permit appointment of attorneys under the Criminal Justice Act. I suggest the committee might want to think about that a bit.

My sixth point concerns this: I want to point out the importance of a court of appeals being a three-judge panel. Even if we obtained one bilingual judge, people coming up to the court of appeals are coming up to get a three-judge opinion. I will not belabor that point.

Also I will not belabor my final point, the docketing point. That is a rather technical point. My statement covers that quite adequately.

Finally, again I would just wish to extend to all of you my sincere appreciation for having this opportunity to appear before you. I trust you will have an opportunity to read my complete statement as I have purposely tried to chop off over three-quarters of what I was going to say this morning, knowing that you were in a time bind.

Again, my sincere appreciation for this opportunity. I will be certainly glad to answer any questions that you might have, Mr. Chairman.

Senator DeConcini. Thank you very much, Mr. Gallup. We appreciate your testimony and your full statement will appear in the record.

You mentioned 125 appeals. Was that the number?

Mr. Gallup. That was the count. Of course, that is only for this 4½-month period.

Senator DECONCINI. How many was it last year? Do you know offhand?

Mr. GALLUP. The total for last year? In one of our submissions we have the statistics shown.

In 1978, there was a total of 156 cases, of which 26 were criminal and 130 were civil.

In 1979, there were 127 total cases; 15 were criminal and 112 were civil cases. They fluctuate some, but I would say we certainly are on the way up there.

Senator DECONCINI. If this legislation were enacted in either this form or some modified form, once you got over the hump, I guess you would say, of getting it implemented and having translations made back into English, whatever period of time that took, would you perceive a diminishing number of cases?

Mr. GALLUP. I wish I could say yes, but I would have to say no. Two things cross my mind.

As you know, we still have three unfilled judgeships in the district of Puerto Rico.

Senator DECONCINI. Yes.

Mr. GALLUP. Those obviously will be filled one day. There is an understanding they may be looking for another judgeship down there in the next biennial judgeship bill.

Further, and I may be trespassing where I should be walking on eggs, we have two or three new judges at the moment. Presumably their work output will increase as they become more acquainted with the procedures. Therefore, I see nothing but an additional influx of cases.

Senator DECONCINI. Do you think this legislation would multiply and additionally add to that increase?

Mr. GALLUP. As I see it, it would, sir.

Senator DECONCINI. Your prepared statement points out that you note a possible problem with certificates of probable cause and prisoner petitions. Are you suggesting from that that the entire district court records will have to be translated for a large number of these petitions?

Mr. GALLUP. I am afraid I am, Mr. Chairman. My reason for this is that you will recall there was a provision for a habeas corpus case to come up when the petitioner, as distinguished from the Commonwealth bringing up the case, there must be a certificate of probable cause issued for the case to proceed. If the district judge in the first instance denied the certificate of probable cause, under the Federal Rules of Federal Procedure, rule 22, once the notice for appeal is filed the court of appeals is required to review the matter as to whether a certificate of probable cause should issue.

Then you have not only the problem of transcribing and translating the record from the U.S. district court, but we also have the additional problem often to really get the flavor of what went on in the State court where you have to obtain also the State court record.

If you were to have trials in Spanish in the district court, presumably the State court record would be in Spanish, and that would not have to be translated for the district court proceedings, but for the appellate level not only would the district court proceedings have to be translated but so would the State court proceedings, and this may involve multiple-week trials, all of which for the court to decide that the appeal should not proceed.

Senator DECONCINI. How does the first circuit address the problem of the equality of justice or having it available to all persons, and adjust the fact that 57 percent of the people in Puerto Rico are not fluent and might be excluded from juries? Has the court of appeals addressed that in your discussions?

Mr. GALLUP. I am not aware of any opinion which has gone squarely on that. I speak now as a clerk.

I assure you that my clerk is obviously concerned about everyone receiving due process of law in every appeal. I cannot come up with a case where this concern has reached the point to where the court had to discuss it in an opinion.

Senator DECONCINI. Do you not know of any case where that was challenged in your circuit?

Mr. GALLUP. I think there has been one or two cases where there has been some discussion but none of the provisions, at least to date, have been successfully challenged.

Senator DECONCINI. Thank you, Mr. Gallup. I appreciate your testimony.

I wish you would express our thanks to Judge Coffin. His statement will be entered for the record and I am sure it will be very helpful.

Mr. GALLUP. He wishes me to extend his appreciation for accepting all of our testimony.

Senator DECONCINI. Mr. Gallup's full statement will be inserted in the record at this point.

[The prepared statement of Mr. Gallup follows:]

PREPARED STATEMENT OF DANA H. GALLUP

Thank you for this opportunity to testify and to thank you for the careful consideration you are giving this bill.

First, I would like to call to your attention the position of the Judicial Conference of the United States. At its March 1980 meeting, the Conference passed the following resolution:

"The Conference, having observed the legislative proceedings to date in the House of Representatives and being concerned over the absence of any exploration in depth of the practical implications of administering a busy metropolitan bilingual court within a national system otherwise wholly operated in the English language, and being further concerned that the right of appeal from judgments of the Puerto Rico district court not be diminished through expense or delay, urges strongly that the Senate hold hearings probing, with assistance from experts, such issues as (1) the fiscal, personnel, and organizational requirements incident to an adequate translation capability, (2) the alternative of reliance on Spanish-speaking appellate judges, (3) the necessity for legislation authorizing two sets of jury wheels, (4) the feasibility of initially confining the bilingual option to a pilot program of limited scope, and (5) the necessity to link the responsibilities of the district court under this legislation to the availability of adequate space, funds, and personnel."

As you can see, this is not a negative position but rather expresses a request to obtain evidence from experts in various fields of work that will be involved if certain trials are to be conducted in Spanish in the U.S. District Court in Puerto Rico and to study the ramifications of enacting such legislation.

In line with the Conference's suggestion, I know you have received much evidence and I do not wish to take up your valuable time by repeating the previous testimony provided by Chief Judge Coffin, Circuit Judge Campbell, Chief Judge Pesquera and the late Chief Judge Toledo. My remarks for the most part will be limited to matters concerning the impact of the bill on the appellate process. Some of the concerns that occur to me as clerk of the court of appeals with over 30 years of experience in the administrative work of this court are as follows:

1. Perhaps the most important point that I would like to mention is that it does not seem to me that it has been pointed out that if the present system of transcribing testimony is continued (and I have not heard of any cost study of

any other method) there is really what might be called a double delay in obtaining records in cases tried in Spanish. The first delay is that usually the transcript is not ordered until the trial is completed and the notice of appeal has been filed. Then, there is the time consumed while the court reporter is transcribing the testimony in Spanish. Then and only then can the translator start work. The second delay occurs while the translator prepares the translated transcript. Presumably, there would not be the need for the second delay with respect to the pleadings and exhibits if one wished to start translating them at the time that the notice of appeal is filed. This latter step, of course, could cause the Government unnecessary expense in the cases where one files a notice of appeal to protect his rights, but after having had a chance to study the transcript decides not to prosecute the appeal.

This delay problem is further exacerbated by the time it often takes in Puerto Rico to obtain the transcript of testimony from the court reporter after it has been ordered. A few examples of this are:

(1) Cases No. 77–1024 & 5: two appeals. It took 2 years and 4 months from filing notice of appeal to completion of transcript.

(2) Cases No. 77–1382, 3, 4, & 5: four appeals in a criminal case. It took 2 years and 2 months to obtain the complete transcript.

(3) Case No. 78–1106: one appeal. It took 1 year and 4 months to obtain complete transcript.

(4) Case No. 77–1507: one appeal in a criminal case. It took 1 year to obtain complete transcript.

(5) Case No. 78–1323: one appeal in which over 10 months have expired and the transcript is still not complete.

(6) Case No. 79–1028: An appeal in a criminal case just argued before the court where appellant is contending that the indictment should be dismissed because of the delays in preparing a transcript. A copy of a portion of that brief is attached as Appendix A.

2. There has been reference in prior testimony to the first circuit's experience in reviewing cases that had been tried in Spanish in connection with the former appellate jurisdiction over the Supreme Court of Puerto Rico. However, that experience does not provide much help in evaluating the present question because of three major differences:

First, under the prior practice there were very few appeals (see the note in Judge Campbell's testimony). Now the Puerto Rico District Court provides the second largest number of appeals of any district in the circuit. Incidentally, in each of the first 3 months of 1980, the district court in Puerto Rico docketed more civil cases in its court than did the district court in Massachusetts which district court has 10 active district judges.

Second, the circuit court's scope of review involving questions of local law was limited to matters where appellant could show that the judgment appealed from was "unescapably wrong" or patently erroneous (*Sancho Bonet* v. *Texas Co.*, 308 U.S. 463 (1940)) whereas there is no such limitation on the scope of appellate review by the court of appeals of a district court decision.

And, third, in the cases under the old system, the trial court case had already received an appellate review by the Supreme Court of Puerto Rico (which appellate review presented no translation problems) before the matter came to the court of appeals. Whereas in the present situation, going to the court of appeals is the first instance of appellate review. Therefore, a capability of getting the record into English expeditiously is much more of a necessity than it was when the court of appeals was a second tier of appellate review.

3. In connection with section 2(a) of the bill providing for the Government attorney making the decision as to whether the grand jury shall be conducted in English or in Spanish, I call your attention to 28 U.S.C. 1826, the so-called recalcitrant witness section, which section requires that any appeal from an order of confinement be disposed of not later than 30 days from the filing of the appeal. To obtain the necessary portions of the transcripts of the grand jury proceedings plus the necessary portion of the transcript on the contempt proceedings in the district court, plus getting the transcripts translated as well as the pleadings translated plus allowing time for briefing in the court of appeals plus allowing time for the court of appeals to consider the matter, seems virtually impossible. Compliance with the time provisions of this statute is very difficult now even without the necessity of any translation.

An example of this problem is a case presented to this court on May 12, 1980, where the district court has found a witness (you will remember that this is a witness—not a defendant) in contempt for refusal to testify before the grand

jury and the court has denied the witness bail pending appeal. Obviously, this individual deserves immediate review of at least the denial of bail, which review will call for reference to the record of proceedings in the district court.

4. Deciding appeals from orders respecting release in criminal cases entered prior to judgment pursuant to Federal Rule of Appellate Procedure Rule 9(a) where the court of appeals is expected to hear the case "without the necessity of briefs * * * upon such papers, affidavits and portions of the record as the parties shall present" could be slowed down to the detriment of the incarcerated defendant if the papers have to be translated before appellate review could begin.

5. In connection with the different treatments in the bill for criminal and civil cases, may I suggest that the subcommittee give some consideration to the impact of this classification on cases arising under 28 U.S.C. 2254 (habeas corpus involving prisoners in State custody) and 28 U.S.C. 2255 (collateral attacks on sentences by Federal prisoners). Both of these types of cases are characterized as being civil, though they are testing criminal convictions. Further, I call your attention to 28 U.S.C. 2253 as supplemented by Federal Rules of Appellate Procedure requiring the issuance of a certificate of probable cause and the review by the court of appeals of a district judge's denial of a certificate of probable cause. Often, the record is needed in the court of appeals to review the question of whether the certificate should issue. Thus, it may well be that a whole district court record (and possibly the State court record) has to be translated to decide that the appeal shall not go forward.

6. The point that the court of appeals acts by three-judge panels should be kept in mind because even if one bilingual judge were appointed to the court of appeals that alone would not help the translation problems as far as the preparation of the record in order for a full review by the court of appeals.

7. A minor point that I feel I should mention concerns the docketing procedure in the court of appeals. F.R.A.P. rule 3(d) requires the district court clerk upon the filing of a notice of appeal, to "transmit forthwith a copy of the notice of appeal and of the docket entries to the clerk of the court of appeals named in the notice." F.R.A.P. rule 12(a) requires the clerk of the court of appeals, upon receipt of these two documents, to docket the case.

As the court of appeals is not bilingual, this obviously presents a management problem in cases processed in Spanish. Perhaps a requirement that the notice of appeal, which is the document that transfers jurisdiction to the court of appeals, should be considered and also a requirement that when docket entries in the district court are made in Spanish that a duplicate set of docket entries be simultaneously maintained in English might be considered.

You will note that the Notes of the Advisory Committee on Appellate Rule point out that this docketing procedure "is designed to give the court of appeals control of its docket at the earliest possible time so that within the limits of its facilities and personnel it can screen cases for approximately different treatment, expedite the proceedings through prehearing conferences or otherwise and in general plan more effectively for the prompt disposition of case."

It would appear that if the notice of appeal and docket entries are not sent up "forthwith," the purpose of the new F.R.A.P. rules would be defeated and if they are not transmitted in English, they would also defeat the said purpose of well as being in violation of local rule 11(g) of the rules of the court of appeals which provides that "The court will not receive documents not in English language unless translations are furnished."

To avoid being repetitious, I have not recited the information contained in the testimony of Chief Judge Coffin and Circuit Judge Campbell before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary of the House of Representatives, which testimony contains many of the statistics and workload figures that I otherwise would have included here, but I do hope that your subcommittee will take that testimony into consideration.

In addition to appendix A mentioned above, also attached is appendix B which illustrates the cases appealed from the U.S. District Court in Puerto Rico to the U.S. Court of Appeals for the First Circuit for the years 1973 to 1979. This workload chart was prepared by the Administrative Office of the U.S. Courts to assist this subcommittee in considering H.R. 5563. Appendix C is a statement prepared by the Administrative Office documenting the experience gained in implementing the Court Interpreters Act, Public Law 95-539, and the relevance of that experience to this proposed legislation.

Finally, I wish to express our appreciation to the subcommittee for its interest and consideration in working on this important legislation so that we may provide the litigants and counsel with the best judicial machinery possible and I personally thank the subcommittee for this opportunity to present testimony.

IV. THE FAILURE OF THE STENOGRAPHER TO SUPPLY THE APPELLANT WITH A TRANSCRIPTION OF THE DISTRICT COURT PROCEEDINGS IN A TIMELY MANNER SHOULD RESULT IN THIS COURT'S ORDERING THE CONVICTIONS VACATED AND THE CASE REMANDED WITH DIRECTIONS THAT THE INDICTMENT BE DISMISSED

This matter was not raised during the course of proceedings in the district court. It is brought to this court for the first time [1] on the defendant's appeal from his convictions. It goes to the heart of his right to prosecute that appeal, which includes a right to have that appeal prosecuted in a reasonably expeditious manner.

This court has had occasion to deal with the problem of transcript delays stalling the exercise of a convicted defendant's appellate rights in a series of cases concerning snags in state and territorial court proceedings. In *Rivera* v. *Concepcion*, 469 F. 2d 17 (1st Cir. 1972), the petitioners had been convicted in the Superior Court of Puerto Rico and denied bail pending appeal. When their transcripts had not yet been prepared almost 2 years after their convictions, they sought federal habeas corpus relief, claiming that incarceration without bail and without the means of pressing their appeals denied them due process of law. After bail motions in both the Supreme Court of Puerto Rico and Federal district court, the latter court entered a bail order, which was stayed by this court until it had received and considered a report of the proceedings. This court's opinion noted that, as matters then stood, the petitioners could expect to spend 3 years in prison before their transcripts had been prepared. Noting that it had revoked bail when an appellant had not demonstrated diligence in pressing his appeal, this court observed that such a rule should work both ways:

"If an appellate court directly, or through the agency of the trial court, refuses bail to an appellant, there should be an implicit obligation on the part of those in authority to permit, and where necessary to assist, in the prompt prosecution and disposition of the appeal." Id., at 19.

Reasoning that it was "self-evident that a defendant who appeals and who seeks bail pending appeal does not wish to stay in jail, and at the least desires his transcript as quickly as possible," the court refused to find that the petitioners had somehow "waived" their claims by not specifically requesting preference. The court went on to lift its stay of the district court's bail order and noted that two years of inaction on the transcript-preparation front "seems more than enough."

"Nor is it to be overcome by a present exercise of diligence and treated as if it had not occurred. Any such rule would mean that a defendant may be freely given improper consideration until the system, or the parties at fault are found out." Id., at 19–20.

Some years later, a convicted defendant in the Commonwealth presented a similar claim. *Layne* v. *Gunter*, 559 F. 2d 850 (1st Cir. 1977). Citing "comity" considerations, the court refused to grant the petitioner habeas relief. It appeared that his efforts in the Federal court had finally triggered State court attention to his pending appeals. See also *Roque* v. *People of Puerto Rico*, 558 F. 2d 606 (1st Cir. 1976).

The instant case presents no considerations of State-Federal comity, but rather those of this court's powers of review, including its supervisory powers, over the Federal district courts in this circuit. Alvarez seeks relief from his conviction and dismissal of the indictment. The court in *Codispoti* v. *Howard*, 598 F. 2d 135, 142 (3d Cir. 1978), although refusing to order such relief in that case, suggested that, in cases of lengthy [2] unjustified delay, a defendant's rights may have been so violated that dismissal of the charges would be warranted. *See also Holmes* v. *United States*, 383 F. 2d 925 (D.C. Cir. 1967); *Whitt* v. *United States*, 259 F. 2d 158

[1] Because this issue is being presented to this court without a record having been made in the court below, this memorandum necessarily relies upon the facts which appear on the face of the multiple requests for extensions of time, filed by the undersigned counsel with this court, in which counsel repeatedly stated that she had not yet received the transcripts ordered from the stenographer. Counsel is mindful that such a record may not be wholly satisfactory and, too, that there is some awkwardness in proceeding to argue from facts which are set out by counsel in such submissions. The delivery of transcripts to this court should, however, parallel counsel's representations, and counsel stands ready to supply any records, including long-running correspondence, should the court wish further documentation of the claims herein. See generally Garvey, *The Attorney's Affidavit in Litigation Proceedings*, 31 Stan. Law Rev. 191 (1979).

[2] The prisoner Codispoti had been waiting for a dozen years for a State court to rule on a motion for a new trial in order to exhaust his state remedies prior to petitioning for habeas relief in the Federal court.

(D.C. Cir. 1958), *cert. denied*, 359 U.S. 937, 79 S. Ct. 651, 3 L. Ed. 2d 637 (1959). The Federal court of Guam actually granted such relief in a case where a defendant on bail pending appeal had been waiting for 2 years for a transcript. *People* v. *Olsen*, 462 F. Supp. 608 (D. Guam 1978), but that ruling was reversed by the court of appeals on dual grounds: (1) that the lower court lacked jurisdiction over Olsen's "appeal" to that court, and (2) that the lower court erred in finding "inherent prejudice" to Olsen in his not receiving a timely transcript, rather than requiring that the defendant demonstrate "specific actual prejudice." *People* v. *Olsen*, 607 F. 2d 234, 236 (9th Cir. 1979) pet. for cert. filed, 48 U.S.L.W. 3390 (Oct. 26, 1979).

To be sure, an order of reversal and dismissal of an indictment is an "extreme sanction," 607 F. 2d 236, but it is the only meaningful sanction in a situation such as the one presented by the hopefully peculiar circumstances of the case at bar.[3] Denied bail pending appeal on terms that he could meet, Alvarez has been incarcerated now 15 months and has still not received the full transcripts of the proceedings against him in the district court.[4]

"For an appellant serving a sentence pending the appeal, delay [in the completion of a transcript and, thus, the disposition of the appeal] may work an irremediable unjust loss of liberty in case his conviction is finally overthrown; and for any appellant, even one not in custody, delay may entail anxiety, forfeiture of opportunity, and damage to reputation, among other conceivable injuries. It is not a satisfactory answer to such hardships that the presumption of innocence will have been abraded by the fact of the initial conviction from which the appeal has been taken." *Petition of Williams*, Mass. Adv. Sh. (1979) 1985, 1990–91, 393 N.E. 2d 353, 355.

It is respectfully suggested that this court would not be acting in an "extreme" manner, but would rather be acting justly, by ordering reversal and dismissal in this case. Besides doing justice to John Alvarez, such a ruling should have a salutory effect upon this circuit's district court and the stenographers who must serve them, upon whose services litigants—and our entire appellate system—are dependent for the enforcement of their rights of review.

Appendix B

TABLE B-7.—U.S. COURT OF APPEALS: NATURE OF SUIT OR OFFENSE OF APPEALS ARISING FROM THE U.S. DISTRICT COURT OF PUERTO RICO FOR THE 12-MO PERIODS ENDED JUNE 30, 1973–79

Nature of suit or offense	Year ended June 30—						
	1973	1974	1975	1976	1977	1978	1979
Total cases	39	60	80	115	117	156	127
Total criminal cases	7	13	14	28	31	26	15
Total civil cases	32	47	66	87	86	130	112

Appendix C

SUBMISSION TO THE SENATE SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY PREPARED BY THE COURT INTERPRETERS PROGRAM OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

During the past year, while the Administrative Office has been implementing the Court Interpreters Act, the AO has learned a good deal about the intricacies of interpreting and translating. But the most salient point is that the oral interpreting and written translation professions suffer from the same malady, absence of qualifying credentials.

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[3] In a recent civil rights action, plaintiff prisoners convicted in Texas State courts prevailed on their claim that they had been denied their due process rights as the result of delays in the preparation of their transcripts. Delays of close to 2 years had been incurred. The district court found various officials liable and awarded the plaintiffs $1 in damages. *Rhoweck* v. *Shaw*, 477 F.Supp. 897 (N.D. Tex. 1979). It is simply unrealistic to expect persons such as Alvarez to seek to vindicate their rights in a proceeding in which no meaningful remedy is available.

[4] On Mar. 24, 1980, counsel received the transcript of Cabrera's guilty plea. Sentencing minutes have not yet been received, although they were specifically requested over a year ago. By proceeding with this appeal without those minutes, the appellant does not mean to waive any error that may be reflected in the manner in which Alvarez was sentenced in the trial court. Despite the trial judge's wide discretion in sentencing legal errors do occur. *United States* v. *Wardlaw*, 576 F.2d 982 (1st Cir. 1978).

Presently in the United States there is no certification for translators. As was the case before certification for interpreters, when individuals were able to autodeclare themselves interpreters and so promote themselves, individuals presently can claim to be translators without possessing the required skills. To certify requires rigorous testing. Even in the case exclusively of Puerto Rico, it would be impossible to impose stringent requirements such as graduation from a particular school of interpreting as a hiring criterion. Therefore, certification should be a criterion for employment by the court in Puerto Rico, not applicable solely to freelancers whom the court might need to employ from time to time. Logically, then, just as Congress felt the need to certify court interpreters, there would be the need to certify all translators under the present bill.

Translators and interpreters work with the same basic tool—languages, words, phrases. But they work as differently as the cabinetmaker and the wood sculptor, each using his raw material to turn out a different product. The interpreter renders meaning as closely to what was said as possible, conserving tone, style, and intent, but is rarely literal. He has several visual aids to help him with his task. He reads body language, gestures, facial expressions to give clues to work choice. He can hear laughter or giggles and judge intent. Adaptability and fluency are very important.

The translator has a more difficult job. There is no body language to guide him. The translator must be more versed in the subject matter. His awareness must come from adequate exposure to written material on the subject because the possibilities for distortion are endless.

Even though the translator knows languages well does not mean that he can reproduce it in another form easily. He must also be a skilled writer. The kinds of traits needed by the successful translator are: voracious reading habits (the kind of person who reads even the fine print on a Crackerjack Box); a semanticist; a terminologist; excellent writer.

Court translators, if dealing with documents or materials from other countries, must also be intercultural communicators. They must be able to discern intent of laws and documents that they are requested to translate into English.

The time factor is an essential concern in the appeals process. Speed in the cause of justice must not be favored over accuracy in the cause of justice. Both must move together in the same rhythm just as the jockey and the race horse must hit the finish line together. One without the other wins no purses. Indeed, the very manner in which documents are translated is important. If the workload is so heavy, or the time schedule so tight for particular cases so that more than one translator works on different portions of the text, there will need to be reviewers and correctors so that the same flow, the same tone and style, is maintained. This will increase manpower needs.

One translator succinctly summed up her feelings by questioning whether "an entire judicial process can revolve around translations." The grounds for appeal, with two written records to compare, would be endless. Even the best professionals quibble about the choice of words. The courts could find themselves immersed in appeals from losing plaintiffs or defendants, which even if denied would use significant court time.

Senator DECONCINI. We also have a number of other statements that should be inserted in the record. First, we have the statement from our colleague, Senator Bob Dole. That will be inserted as well as the statement of the Honorable Frank M. Coffin, chief judge, U.S. Court of Appeals for the First Circuit, and also the statement of Mrs. Nora M. Lejins, chief of the Language Services Division of the Department of State. Those statements will also be made part of the record.

[The additional prepared statements referred to above can be found in the appendix.]

Senator DECONCINI. We will stand in recess. The record will remain open for 2 weeks.

[Whereupon, at 11:40 a.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

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APPENDIX

STATEMENT

SENATOR BOB DOLE

HEARING ON PUERTO RICO TRANSLATORS ACT

MR. DOLE. MR. CHAIRMAN, AS THE RANKING MINORITY MEMBER. I WELCOME THIS OPPORTUNITY FOR OUR SUBCOMMITTEE TO RECEIVE TESTIMONY ON THIS PROPOSED LEGISLATION TO PROVIDE FOR SPANISH PROCEEDINGS IN THE FEDERAL DISTRICT COURT IN PUERTO RICO. THE INTENT OF THIS LEGISLATION IS OBVIOUSLY TO ENSURE THAT THE FAIRNESS OF THE FEDERAL JUDICIAL PROCESS IN PUERTO RICO IS NOT UNDERMINED BY THE INABILITY OF THE LITIGANTS TO COMMUNICATE IN ENGLISH. THIS IS AN IMPORTANT GOAL AND I KNOW THAT ALL THE MEMBERS OF THIS SUBCOMMITTEE SHARE THIS CONCERN.

I HAVE LONG BEEN CONCERNED ABOUT THE SPECIAL BURDENS BORNE BY THOSE WHO SPEAK ONLY A LANGUAGE OTHER THAN ENGLISH. IN MY OWN STATE OF KANSAS, I HAVE SUPPORTED AND SPOKEN OUT IN FAVOR OF MEASURES WHICH ATTEMPT TO REMOVE THE UNNECESSARY INEQUITIES CERTAIN MEMBERS OF OUR COMMUNITY MUST BEAR MERELY DUE TO THE FACT THAT THEY DO NOT SPEAK ENGLISH. AT THE SAME TIME, OF COURSE, NON-ENGLISH SPEAKING PERMANENT RESIDENTS OF THIS COUNTRY MUST BE ENCOURAGED TO LEARN ENGLISH. THIS IS AN ENGLISH-SPEAKING NATION AND SUCCESS IN LIVING HERE CAN ONLY COME WITH A FACILITY IN ENGLISH. THUS, PROVIDING NON-ENGLISH SPEAKING PERSONS WITH TEMPORARY ESCAPES FROM THE NEED TO SPEAK ENGLISH DOES THEM NO REAL SERVICE. YET THERE ARE FAIR AND INEXPENSIVE MEASURES WHICH CAN BE TAKEN TO EASE THESE PEOPLE THROUGH A TRANSITION TO ENGLISH OR REMEDY SERIOUS INJUSTICE.

ONE SUCH REMEDY AT THE FEDERAL LEVEL, ENACTED DURING THE LAST CONGRESS, WAS THE COURT INTERPRETERS ACT. I SUPPORTED THIS STATUTE WHICH PROVIDES FOR INTERPRETERS FOR LITIGANTS OR WITNESSES IN FEDERAL COURT WHO SPEAK ONLY A LANGUAGE OTHER THAN ENGLISH OR WHO SUFFER FROM A HEARING IMPAIRMENT. THROUGH SUCH PROVISIONS, THE COURT INTERPRETERS ACT ADDRESSED A PROBLEM OF THE NON-ENGLISH SPEAKING COMMUNITY IN A FASHION WHICH DID NOT IMPOSE GREAT COSTS ON THE COURT SYSTEM OR DISRUPT COURT PROCEEDINGS.

THE BILL BEFORE US TODAY ADDRESSES A PROBLEM CLOSELY RELATED TO THAT REMEDIED BY THE COURT INTERPRETERS ACT. CONSEQUENTLY, THIS HEARING MUST CONSIDER NOT ONLY THE MANY QUESTIONS ABOUT WHETHER THIS PROPOSED LEGISLATION REASONABLY AND EFFICIENTLY RESPONDS TO A REAL NEED. BUT IT MUST ALSO DETERMINE WHY LEGISLATION BEYOND THE COURT INTERPRETERS ACT IS NEEDED. IF SUCH A NEED EXISTS, AND THIS BILL PROPOSES A FAIR AND RESPONSIBLE LEGISLATIVE ANSWER, I AM CONFIDENT THAT THIS SUBCOMMITTEE WILL ACT FAVORABLY ON THIS LEGISLATION. IF THIS BILL DOES NOT SUPPLY SUCH AN ANSWER, THIS SUBCOMMITTEE WILL DEVISE ONE, IF ONE CAN BE DEVISED.

ALL OF OUR WITNESSES TODAY ARE INFORMED OBSERVERS OF THIS PROBLEM WHOM I TRUST WILL PROVIDE THIS SUBCOMMITTEE WITH MUCH HELPFUL INFORMATION ON THE SITUATION IN PUERTO RICO. I LOOK FORWARD TO ALL THEIR TESTIMONY.

STATEMENT

OF

HONORABLE FRANK M. COFFIN
CHIEF JUDGE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Mr. Chairman, this statement is submitted for the record for the subcommittee hearings on H.R. 5563, the Puerto Rico Bilingual Act. I shall confine my remarks to conveying to the members of this subcommittee the response of the Judicial Council for the First Circuit to information provided to the Administrative Office by experts in the field of translation and the management of translation services. My testimony before the Subcommittee on Civil and Constitutional Rights of the House of Representatives addressed the concerns of the U.S. Court of Appeals, and I shall not reiterate those remarks.

Following the hearings in May of 1979, the Administrative Office of the U.S. Courts solicited the comments of expert translators, government translation organizations, and private attorneys who currently use translation services to litigate in the Spanish language. Based on the comments received after the experts reviewed H.R. 5563, the Judicial Conference in March of 1980 considered the House bill, H.R. 5563. The Conference took no position as to the merits of H.R. 5563 but requests that the Senate avail itself of the expert knowledge available concerning the feasibility of H.R. 5563 as passed by the House, information as to which was not presented during the House hearings.

The Judicial Council of the First Circuit recently considered the expert opinions provided to the Administrative Office and concluded, assuming that the Congress wishes to pass some legislation of this type, that the concept of providing a bilingual option would be best served by limiting the scope of H.R. 5563 to criminal cases. This alternative was initially suggested by the former Chief Judge of the U.S. District Court in Puerto Rico during the hearings conducted by the House subcommittee in November 1978, in Puerto Rico.

First, the rationale for allowing lawsuits in Spanish in the District Court of Puerto Rico applies more forcefully to criminal cases than to civil suits. A primary justification for the bill has been the culturally alien character of English proceedings for Spanish-speaking defendants and litigants in the U.S. District Court in Puerto Rico. While it may be unseemly for the government to require a criminal defendant to stand trial before a federal tribunal and force him to wage his defense in a language foreign to him, the weight of this consideration evaporates in the case of a civil litigant who voluntarily avails himself of federal law and a federal forum.

Second, it will be the civil litigants exercising the Spanish language option that will be so onerous a resource drain on the government. Appended to this statement are two cost estimates. Appendix A

outlines the costs incident to H.R. 5563 as it applies to civil and criminal cases; using the same line items, Appendix B indicates the cost for only criminal cases. The difference in cost is significant -- $2,073,000.

Not only is the cost of providing this option to civil litigants expensive, but more importantly, with a large and growing volume of civil cases in the Puerto Rico District Court, the likelihood of delay in appeals becomes greater. The Judicial Council is concerned that litigants in Puerto Rico not be prejudiced in their right to appeal by the delay necessarily incident to translation -- a delay which will be, according to expert translator testimony, exacerbated by the tremendous volume of civil cases being processed.

In addition, a factor which was not included in the cost estimate because it cannot be predicted as to exact number, is the number of civil cases which will be filed in federal court under its diversity jurisdiction because the Spanish language option is available. Although these cases cannot yet be counted, the effect of these cases can be accurately projected. The main effect of extending the Spanish language option to civil cases will be to dramatically increase the number of diversity jurisdiction suits in the District Court. Among parties who prefer to litigate in Spanish, the option of litigating in federal court is likely to be attractive. For example, the federal

court provides jury trials, which are unavailable in Commonwealth courts applying Spanish-rooted civil law. The availability of jury trials in federal court suggests that more diversity cases will be brought in Puerto Rico than in states providing jury trials in their own local courts. In any event, prestige, procedure, the potential for greater recoveries and fees as well as the potential for disposing of cases more quickly than in local courts, all should bring many disputes about the Commonwealth's law into federal court through diversity jurisdiction.

The burdens on the federal courts created by diversity jurisdiction will be magnified in Spanish language trials in Puerto Rico and subsequent appeals. Each piece of litigation will be more expensive because on appeal the entire record must be translated; the doubtful ratio of cost to benefit in the general category of diversity suits will be exacerbated in Puerto Rico.

Finally, this bill proposes a radical experiment never before tried in the United States. The plan is more likely to succeed if the scope of the operation is small and manageable. Restricting operation to the area of greatest need, criminal cases, increases the probability that bill will impove the substance of justice available to Puerto Rican people in the District Court. In any

event, experience in implementing a bilingual option on a restricted basis would provide the best possible data and guidelines if it is desired in the future to expand the program.

Thank you for the opportunity to present the views of the Judicial Council for the First Circuit.

APPENDIX A

Revised, Estimated Number of Appeals

The estimated appeals requiring translation of district court proceedings from Spanish into English were developed based on the following information:

1. Criminal cases: 36 criminal appeals were filed in the First Circuit Court of Appeals from Puerto Rico during statistical year 1970. It is anticipated that approximately 60 percent of the criminal cases in Puerto Rico would be conducted in Spanish under H.R. 5343. 21 appeals

2. Civil cases, involving civil rights, prisoner petitions, labor laws, property rights, social security, other statutes, and local questions: 60 such appeals were filed in the First Circuit Court of Appeals from Puerto Rico during 1970. An estimated 80 percent of civil cases of these types in Puerto Rico would be conducted in Spanish. 73

3. Other civil cases, involving contract actions, real property actions, and tort actions-personal injury: 35 such appeals were filed in the First Circuit Court of Appeals from Puerto Rico during 1970. Because a significant part of these cases may involve corporations, it is anticipated that approximately 50 percent of these cases in Puerto Rico would be conducted in Spanish. 19

Subtotal 113 appeals

4. An increase of 50 percent in cases going to appeal is expected as a result of the addition of four new district judgeships under the Judgeship Act of 1970 in addition to the three judgeships previously authorized. The increase would also be due to an increase in the number of diversity cases going to Federal courts and the growing trend in numbers of civil cases. 57

Total 170 appeals

Pages for Translation

Based on the actual volume of pages requiring translation for appeal in 73 pending cases appealed from the district court in Puerto Rico, it is estimated that an average of 310 pages of pleadings, 300 pages of transcript, and 110 pages of exhibits, for a total of 680 pages, are received per case on appeal. This figure has been augmented by a factor of 10 percent to provide for initial appearances, arraignments, dispositions, pretrial conferences, interlocutory decisions on motions, final orders, and sentencing. 170 cases @ 680 pages. 112,200 pages

Translator Requirements

An estimated translation speed of 10 pages per day per translator is expected based on the semi-technical level of difficulty of the translations: 11,220 man days. 51 man years

Cost

These estimates are based on the assumption that the entire cost of the translations will be borne by the court as part of the cost of operating the court.

	Amount
Personnel Compensation:	
1 Supervisory Translator @ JSP-14 ($36,711)	$ 36,711
11 Reviewers @ JSP-12 ($24,701)	419,351
51 Translators @ JSP-11 ($20,611)	1,051,161
29 Secretaries/proofreaders @ JSP-6 ($12,531)	363,599
Total Personnel Compensation	1,870,831
Personnel Benefits:	
Cost of Living Allowance @ 5 percent	93,583
Agency contributions for retirement, life insurance, and health benefits @ 10 percent	183,163
Total Personnel	2,100,576
Miscellaneous Expenses @ $1,000	152,000
Equipment, including memory typewriters and dictating machines	171,400
Space Rental: 200 sq. ft./each @ $8.70	167,010
Furniture and Furnishings @ $9.20 per sq. ft.	176,320
	(17,051)
Subtotals:	
First Year	$2,773,255
Succeeding Years	$2,643,037
Cost Per Case (annual recurring cost ÷ 170)	$ 14,371

Additional Court Reporter Requirements:

It is anticipated that the three English-speaking court reporters currently on staff would remain, and that the new judges would employ Spanish-speaking reporters because of H.R. 5343. However, two additional swing court reporters, or in lieu thereof, contractual court reporter services, would be required for those times when trials in Spanish or English taking place at the same time may be greater than the number of available Spanish or English speaking court reporters.

Two court reporters or contractual services (rounded): $ 60,000

Planning and Implementation:

Provision is being made for the expenses related to planning and implementation of H.R. 5343, including the formation of local rules, travel of advisory committee members, and a planning coordinator. $ 50,000

Summary (rounded):

First Year	$2,883,000
Succeeding Years	$2,703,000

(1) Recurring

Prepared by Administrative Office, U.S. Courts
Planning, Management Division
May 1970

APPENDIX B

BUDGETARY REQUIREMENTS FOR CRIMINAL CASE TRANSLATION
UNDER H.R. 5643

Workload

The average number of criminal appeals requiring translation of an appellate record from Spanish into English is estimated at 27*, based on the average over the past five years.

Pages for Translation
Based on the actual volume of pages requiring translation for appeal in 73 pending cases appealed from the district court in Puerto Rico, it is estimated that an average of 210 pages of pleadings, 280 pages of transcript, and 110 pages of exhibits, for a total of 600 pages, are received per case on appeal. (Note: This is an average of civil and criminal cases combined.) This figure has been augmented by a factor of 10 percent to provide for initial appearances, arraignments, depositions, pretrial conferences, interlocutory decisions on motions, final orders, and sentencing. 27 cases @ 660 pages. 14,520 pages

Translator Requirements
An estimated translation speed of 10 pages per day per translator is expected based on the semi-technical level of difficulty of the translation: 1,452 man days. 7 man years

Cost These estimates are based on the assumption that the entire cost of the translations will be borne by the court as part of the cost of operating the court.	Amount
Personnel Compensation:	
1 Supervisory Translator @ JSP-14 ($34,713)	$ 34,713
2 Reviewers @ JSP-12 ($24,703)	49,406
7 Translators @ JSP-11 ($20,611)	144,277
4 Secretaries/proofreaders, OJSP-6 ($12,531)	50,124
Total Personnel Compensation	278,520
Personnel Benefits:	
Cost-of-Living Allowance @ 5 percent	13,926
Agency contributions for retirement, life insurance, and health benefits @ 10 percent	27,852
Total Personnel	320,298
Miscellaneous Expenses @ $1,600	22,400
Equipment, including memory typewriters and dictating machines	26,000 NR
Space Rental: 200 sq. ft./each @ $8.70	24,612
Furniture and Furnishings @$9.29 per sq. ft.	26,012 NR
	(2,601)
Subtotals:	
First Year	$ 419,322
Succeeding Years	$ 359,911
Cost Per Case (annual recurring cost ÷ 22)	$ 16,814

Additional Court Reporter Requirements:
It is anticipated that the three English-speaking court reporters currently on staff would remain, and that the new judges would employ Spanish-speaking reporters because of H.R. 5643. However, two additional swing court reporters, or in lieu thereof, contractual court reporter services, would be required for those times when trials in Spanish or English taking place at the same time may be greater than the number of available Spanish or English-speaking court reporters.

Two court reporters or contractual services (rounded): $ 60,000

Planning and Implementation:
Provision is being made for the expenses related to planning and implementation of H.R. 5643, including the formulation of local rules, travel of advisory committee members, and a planning coordinator. $ 50,000 NR

TOTALS (rounded):	
First Year	$ 530,000
Succeeding Years	$ 430,000

* Does not include any appeals based on challenges of translation accuracy.
NR Nonrecurring

Prepared in Administrative Office,
United States Courts
Financial Management Division
May 1980

APPENDIX C

SUMMARY COST COMPARISONS BETWEEN
H.R. 5563 as passed by the House
and Senate amendments to H.R. 5563

	H.R. 5563 as passed[1] by the House (civil and criminal cases)	Senate amendments to[2] H.R. 5563 (criminal cases only)
number of pages requiring translation	112,200	14,520
number of man years required to translate (translators only, not including support or management services)	51	7
total first year cost	$2,883,000	$530,000
total annual recurring cost in succeeding years	$2,503,000	$430,000
	DIFFERENCE BETWEEN ANNUAL RECURRING COSTS	SENATE VERSION $2,073,000 LESS THAN HOUSE VERSION

[1] See Appendix A attached for full cost estimate
[2] See Appendix B attached for full cost estimate

DEPARTMENT OF STATE

Washington, D.C. 20521

May 7, 1980

Ms. Deborah Kirk
Attorney-Advisor
Administrative Office of the
United States Courts
Washington, D. C. 20544

Dear Ms. Kirk:

In reference to your letter of April 22 regarding the establishment of a translation service in the United States District Court of Puerto Rico, I must confess I find it difficult to see how such a program can be implemented, given the estimated workload.

In order to arrive at a more workable figure for the workload, let us convert those 112,200 pages to words. This is a normal practice in our profession. Given a very conservative figure of 360 words per page (a double space 8-1/2 x 11" standard page has approximately 250 words while a legal size page single space may have as many as 700), we arrive at a word count of approximately 40 million words. At an average production rate of 2,000 words a day per translator (a standard widely accepted in the profession), we find that 90 man years of translating time are needed.

These 90 translators would have to be at least at the GS-11 level since, as stated on page 62 of the Hearings' comments, "...you are dealing with a technical vocabulary, a products liability case, medical testimony, technical testimony -- and certainly if you are translating a judge's interlocutory decision, for example, if you want to get the flavor of the legal reasoning that is applied in a charge -- ... you have to have a sophisticated and skilled translator."

In addition, if, as points 2 and 4 of your letter indicate, you have to have certifiable translations capable of withstanding the likelihood of challenges as to accuracy, you will need reviewers. A reviewer (or revisor as is known in other organizations), normally reaches the GS-12 level through years of experience as a translator. He/she reviews, edits, and checks for accuracy and style the work of other translators. A reviewer's rate of production is calculated at an average of 4,000 words a day. We should figure then that some 45 reviewers at the GS-12 level are needed.

This large volume of material has to be typed and proofread. No less than 30 typists would be needed (one for every three translators), for a total full-time staff of 165.

When considering such a large staff, provision must be made for vacations and other leave. A full staff of 100 translators, 50 reviewers, and 40 typists would probably be more appropriate. To manage such numbers of people, the staff would have to be divided into sections or units of, for example, 10 translators, 5 reviewers, and 4 typists each. Each unit would be supervised by a GS-13 supervisor, all 10 supervisors forming also a terminology group, and a training staff. The entire operation would be under 1 director (GS-15) with a Deputy Director (GS-14) as a support and in charge of training. Approximate total staff 202.

As a comparison, page 38 of the Hearings' comments shows that the Translation Office of the Supreme Court of Puerto Rico, composed of one director/translator (probably reviewer), four full-time translators, four secretaries, and one proofreader, translated a total of 1,250 pages in FY 1978. If we were to project this staff to the estimated 112,200 pages, we find that what is actually needed is a staff of 987. (it is safe to assume that the type of pages involved in both instances is the same)

Page 39 of the same Hearing's proceedings goes on to state that "the University of Puerto Rico does have a graduate School of Translation, but several individuals indicated that their graduates were not particularly well qualified to translate into English." According to your workload estimates, close to 75% of the translations would be into English.

Page 61 of the comments also shows that "Ms. Garsh was told, when she was in Puerto Rico, by the head of the translation service of the supreme court there, they had great difficulty getting people who wanted to work as translators," and continues saying that "the person in the Supreme Court of Puerto Rico in charge of getting translators said that it was not easy to get competent people to do it." This from a person heading a staff of four translators and a yearly workload of 1,250 pages.

The question then is, even supposing adequate funding, where does one get the necessary people? Training such a staff in the 18-month period indicated is out of the question. It would take several years, at a low production rate, to train the 50 reviewers and the 10 paralegal experts to act as supervisor, plus the 100 translators at the top of their profession.

We would suggest, as indicated on page 63 of the comments, that the translation service be started as a small pilot project, with say one unit of 10 translators, 5 reviewers, 4 typists. Unfortunately, such a small group would probably be immediately flooded with vast amounts of work, would be unable to train others for lack of time, and would quickly fold under the pressure.

Contract cost, at the present rate of 6¢ a word, may seem attractive. For $2,400,000 a year, one could get the 40 million words translated. Unfortunately, without a proper reviewing staff that's all you would get, 40 million words, with no guaranty whatever of the quality of the work. Timeliness would also be a serious

problem, for the 40 million words would have to be farmed out to many different commercial outfits in various parts of the country. We don't believe that commercial firms or freelance translators in Puerto Rico could handle such volume. As a matter of fact, good, qualified translators are in short supply all over the world.

I apologize for sounding so pessimistic about this project, but I am simply trying to inject some realism from the translator's point of view. There may be other ways of solving the impasse. A more detailed study of the workload, with professional translators acting as consultants, may reveal that the workload is actually less. An intensive dialogue with the people in charge of the graduate School of Translation of the University of Puerto Rico could be undertaken to study the feasibility of an aggressive training program to "produce" the needed personnel. A limited effort may also be started, if the judges agree to be extremely selective in requesting translations in order for the operation to grow slowly over a period of years.

Please don't hesitate to call on me if I can be of further assistance on this matter.

Sincerely yours,

Nora M. Lejins

(Mrs.) Nora M. Lejins
Chief
Language Services Division

AMERICAN BAR ASSOCIATION

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Writer's Direct Number: 331-2210

May 15, 1980

Honorable Dennis DeConcini
Chairman
Subcommittee on Improvements
in Judicial Machinery
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As you have been advised previously, the American Bar Association supports the enactment of legislation to provide for the optional use of Spanish in the United States District Court for the District of Puerto Rico.

At its meeting this past February, the Association's House of Delegates approved the following resolution:

> BE IT RESOLVED, That the American Bar Association supports enactment of legislation such as H.R.5563 and S.1939, 96th Congress:
>
> (1) To provide that certain pleadings and proceedings in the United States District Court for the District of Puerto Rico may be filed and conducted in the Spanish language; and
>
> (2) To permit Puerto Ricans to serve upon grand juries and petit juries in the United States District Court for the District of Puerto Rico in proceedings conducted only in Spanish despite their inability to speak and understand English.

In connection with the Subcommittee's current hearings, I enclose a copy of the report of the Special Committee on Coordination of Federal Judicial Improvements which accompanied the resolution to the House of Delegates. Although not a part of the official action of the Association, the report, I hope, will be of assistance to the Subcommittee.

I should note that H.R.5663, as that bill passed the House and is now before the Subcommittee along with S.1939, contains two provisions not discussed in the Special Committee's report but which should be observed. First, the bill provides that the Chief Judge of the District Court may apply to the Judicial Council of the First Circuit for waiver of the Spanish language provisions under specified circumstances. Second, H.R.5663 contains a twelve-year sunset provision. The ABA has made no attempt to deal with the details of the legislation, trusting that the Congress will speedily resolve the differences between H.R. 5663 and S.1939, so that this meritorious, overdue improvement in the administration of justice in Puerto Rico may be accomplished.

I would very much appreciate your making this letter and its enclosure a part of the hearing record for the hearing scheduled for May 19.

Sincerely,

Herbert E. Hoffman

HEH:jsr
Enclosure

Report to Accompany Resolution Relating to the Use of Spanish in the United States District Court for Puerto Rico

REPORT

There is presently pending before the Congress H.R. 5563 sponsored by Congressman Don Edwards for himself and other members of the House of Representatives, including members of both parties and Baltasar Corrada, Puerto Rico's Resident Commissioner to the United States. An identical companion bill, S. 1939, has been introduced by Senator Baker. H.R. 5563 has been ordered reported favorably by the Committee on the Judiciary; S. 1939 is pending before the Senate Committee on the Judiciary.

The pending bills would permit initial pleadings before the United States District Court for Puerto Rico to be filed in either Spanish or English, rather than in English alone as presently required. All further pleadings and proceedings would be required to be in English, as at present, unless:

(a) The defendant in a criminal case requests that they be in Spanish;

(b) All parties to a civil case agree that they be in Spanish; or

(c) The court, in the interest of justice, orders that they, or any part, be conducted in Spanish.

All written orders and decisions would be in the language selected for the proceedings, rather than only English as at present. Unless the appellate court were to direct otherwise, upon appeals all or the necessary parts of Spanish portions of the appellate record would be translated and all appellate documents would be in English, as at present. The District Court would be required to pay the cost of translation. Authority would be vested in the District Court and the Court of Appeals for the First Circuit to adopt implementing rules.

All jurors in the United States District Court of Puerto Rico must under present law be able to speak and understand English. The pending bills would dispense with that requirement. The attorney for the Government would determine whether a grand jury's proceedings shall be conducted in English or Spanish. If translation is required, the Government would pay the cost of translation. A petit juror could be challenged because of inability to speak and understand the language in which the trial is to be conducted.

The pending bills would become effective one year and 180 days after enactment, except that the District Court must in the meantime provide for phasing in portions of the amendments, and the Court of Appeals would be authorized immediately to adopt its local rules. The Administrative Office would be required to report the progress made from time to time.

The bills under consideration do not address the question of funding. It is presumed that, upon enactment, the changes will be adequately funded by the Government.

BACKGROUND

The District Court of the United States for Puerto Rico was founded in 1900, shortly after the Spanish-American War in 1898. Since that time, English has been mandated by statute as the language to be used in all pleadings and proceedings before the Court: Foraker Act of April 12, 1900, now part of the Puerto Rican Federal Relations Act, 48 U.S.C. 864. In the same year English was mandated as the official

language for public instruction. It was assumed that a 400-year-old Spanish-speaking community could be turned into an English one.

The intervening years have demonstrated that Spanish will remain the overwhelmingly dominant language in Puerto Rico. In 1949 official sanction was given to Spanish as the language for public instruction and English became only a required subject in the schools.

An effort was made by Puerto Ricans, at least as early as 1959, to change the requirements that all proceedings in the United States District Court for Puerto Rico must be conducted in English. H.R. 9234, introduced in the Congress during that year at the instance of the Government of Puerto Rico, failed of enactment. Subsequent consideration of the subject was deferred pending appointment of a commission to study relations between the United States and Puerto Rico. Since 1973 Puerto Rico's Spanish-language effort in the Congress has been continuous. Congressional hearings have discussed the subject of the possible use of Spanish in the United States District Court in Puerto Rico in each Congress since then. The following bills were introduced with various provisions for the use of Spanish in proceedings before the Court:

S. 1724, of the 93rd Congress, the "Bilingual Courts Act", introduced in 1973 by Senator Tunney on behalf of himself and eighteen other senators. As later amended, the bill was passed by the Senate. The House failed to act on the bill.

S. 565, of the 94th Congress, experienced the same fate.

S. 1315, of the 95th Congress, introduced by Senator De Concini for himself and other senators in 1977. As later amended, this bill was passed by the Senate. It provided for court interpreters throughout the federal court system and for the use of Spanish in the federal court

in Puerto Rico. An identical bill, introduced in the House as H.R. 10228 by Congressman Richmond in 1977 was superseded in 1978 by a substitute bill, H.R. 14030, providing for a Court Interpreters Law and eliminating the special provisions for Puerto Rico, with committee assurances that Puerto Rico legislation would be introduced separately. The Senate concurred in H.R. 14030, which became Public Law 95-539 on October 28, 1978.

H.R. 2972, of the 96th Congress, introduced early this year. This bill has been modified and superseded by the pending House bill, which is identical to the pending Senate bill.

There has been overwhelming public support to permit the use of Spanish in proceedings before the United States District Court in Puerto Rico. The Ad Hoc Advisory Group on Puerto Rico, appointed by the President of the United States and the Governor of Puerto Rico in 1973, recommended that proceedings in the Court be conducted in Spanish except when the Court determines it to be in the interest of justice to conduct the proceedings in English. Others recommended that the proceedings continue to be conducted in English except when the Court determines it to be in the interest of justice to use Spanish. In one form or another, the following have strongly supported the use of Spanish, at least on a discretionary basis:

The Governor of Puerto Rico
The Senate of Puerto Rico
The House of Representatives of Puerto Rico
The Secretary of Justice of Puerto Rico
The Attorney General of Puerto Rico
The Civil Rights Commission of Puerto Rico
San Juan Legal Services, Inc.
The United States Attorney for the District of Puerto Rico
The Public Defender of the United States for the District of Puerto Rico

The Administrative Law Judge for Social Security in Puerto Rico, formerly State Delegate to the American Bar Association
The Puerto Rico Bar Association
The Federal Bar Association of Puerto Rico
The Bankruptcy Judges of the United States District Court in Puerto Rico
The Dean of Inter-American University of Puerto Rico Law School
The Dean of Catholic University of Puerto Rico School of Law
The Acting Dean of the University of Puerto Rico Law School
The Resident Commissioner of Puerto Rico, Member of the United States Congress
Congressman Butler, of Virginia
The United States Department of Justice

The Judicial Conference of the United States has not expressed opposition to the policy implications of such legislation, but was opposed to any act which did not consider the practical effects of such legislation with regard to adaptation of cases and statutes written in English, the increased expense of equipment, space and personnel, delays at both the trial and appellate levels, difficulties in obtaining Spanish-speaking personnel, and the problems of immediate and emergency review in the English-speaking Court of Appeals.

The only other expressed reservations to the proposal to permit the use of Spanish in the Court have come from district judges in Puerto Rico and members of the First Circuit Court of Appeals, likewise largely on administrative grounds. However, Chief District Judge Cancio testified in 1973 that, since 90% of the cases tried in the Court required the use of an interpreter, the mandate to try cases in English caused an increase of trial time by one-third to one-half. His successor, Chief Judge Toledo, has supported the objective of the pending legislation, but pointed out that more judges and court personnel would be needed. Recently he expressed the view that the proposal should presently be limited to criminal cases. District Judges Pesquera and Torruella, both have expressed administrative concerns and even a

constitutional question. Chief Judge Coffin, of the First Circuit, has characterized the proposal as "an admirable but expensive undertaking," calling for various administrative measures. His colleague, Judge Levin H. Campbell, while likewise suggesting administrative matters, stated that he is "mindful of and not unsympathetic to the general considerations that have led [members of the House committee] to believe that bilingualism [in the Court at Puerto Rico] is desirable," and expressed an intention on the part of the Court to cooperate.

The bills currently under consideration take into account various of the suggestions made at the succession of Congressional hearings. Among the changes included are:

1. The District Court is required to give notice to the parties of the circumstances in which pleadings and proceedings may be conducted in Spanish.

2. The District Court may direct that any order or decision be translated.

3. The Court of Appeals may direct that part or all of an appellate record need not be translated. Otherwise, it is to be translated into English at the cost of the District Court [eliminating the prior provision that the court may direct the parties to pay for the translators].

4. The attorney for the Government, rather than the Court, will decide whether a grand jury shall be conducted in English or Spanish. The Government is to pay the cost of any translation of a grand jury proceeding.

5. The District Court may adopt local rules to carry out the law and shall by order from time to time phase in portions of the amendments before the effective date of the act.

6. The Court of Appeals is given authority immediately to adopt local rules to carry out the law governing the language used in matters coming before it.

7. Otherwise, the changes are to become fully effective one year and 180 days [rather than 180 days] after enactment of the law.

Aside from the objections specified by the Court of Appeals and District Court judges affected, the proposed legislation has the overwhelming approval of all of those who have expressed themselves before the Congress thus far in the many hearings held on the subject during the past five years. Apart from those matters requiring the appropriation of funds, the changes made from prior bills would appear to meet most, if not all, of the judges' objections and apprehensions. Substantial time is allowed to phase in the new proceedings. By court rules, including authority to regulate the admission to practice before the federal court, adequate competency of the parties' lawyers can be controlled. While the proposed legislation does not seek to define when it will be in the interest of justice to impose Spanish proceedings on an unwilling civil litigant, the Court may do so in the rules to be adopted or otherwise will develop the criteria by the decision-making process.

Facilities and personnel to handle the new procedures are a matter primarily of funding. This must be left to the Congress. The only problem which funding alone will not necessarily solve is the delay occasioned by the need for translation in matters to be handled by the Court of Appeals. Since the defendant in criminal proceedings and the parties in civil proceedings who have together elected to litigate in Spanish must do so in light of the attendant delays in appellate proceedings, they would have no cause for complaint. The only parties who could properly complain would be those civil litigants who had not chosen to proceed in Spanish before the trial court but who have nevertheless, in the interest of justice, been compelled to do so. It will be unlikely and probably rare that the district judges,

who have expressed their apprehension about proceedings in Spanish, would find it to be in the interest of justice to impose Spanish proceedings upon an unwilling civil litigant having appellate proceedings in mind.

Although the issue, whether Spanish proceedings in the United States District Court for Puerto Rico should be permitted, has been characterized as political, which would normally be outside the scope of the Association's interests, there appears to be a real question of meaningful access to justice, requiring the attention of the Association.

There is the 1970 census statistic that more than half of Puerto Rico's population over 10 years of age cannot speak English. The figure is higher for women (60%) and for persons over 60 (75%). Those who reported they could speak English varied greatly in their proficiency. The language of Puerto Rico remains and will remain dominantly Spanish. Access of Puerto Ricans to justice must therefore depend on the use of Spanish in legal proceedings or adequate interpreter arrangements.

The new Court Interpreters Act will greatly improve the availability of interpreter services in all Federal courts. However, while unavoidably necessary for a small minority in a large court system which is dominantly English-speaking, the use of interpreters in the Federal court for Puerto Rico is a most ineffective and highly dubious way of administering justice there.

The present resident district judges and court-support personnel of the Court are adequately bilingual. Permitting litigants in Puerto Rico to litigate in Spanish will, if adequate funding is arranged, provide them with more meaningful access to justice. More members of the Puerto Rican bar will be able to handle proceedings in Federal court there. Puerto Ricans, who are not afforded jury trials in the courts of their Commonwealth, will find jury trials available to them in their Federal court. The jurors will be from a cross-section of their peers,

and not a jury selected from the small English-speaking minority who can presently qualify for jury duty.

Those who prefer to litigate in English will continue to do so, unless the interest of justice is shown to require otherwise. Appellate proceedings will continue to be in English. While uniformity of language throughout the Federal system is desirable, the quality of justice to be provided in the United States District Court for Puerto Rico calls for a unique exception there.

The District of Puerto Rico is indeed unique. No other Federal district presently or in the future may be characterized as an overwhelmingly non-English-speaking district to be treated similarly. The Court Interpreters Act is designed fully to meet the needs of the foreign language population of other districts.

A point is presented that, with an increase currently being made from three to seven district judges, litigation handled in the District Court for Puerto Rico will be substantially increased, and that permitting such litigation to be conducted in Spanish would result in an even greater amount of trial court litigation there and a corresponding increase in appeals to the English-speaking First Circuit Court of Appeals. The demands upon translators for purposes of appeal would be greatly multiplied. This only supports the argument that, as presently operated, the District Court at Puerto Rico does not adequately provide litigants in Puerto Rico with access to justice. Delays in the appellate process may initially be the price to pay by those who choose to litigate in Spanish. With adequate funding, such appellate delay should be minimized if not avoided.

English-speaking litigants would not be prejudiced by the proposed changes in the jury system. To the extent that English-speaking jury panels presently constitute their peers in Puerto Rico, such panels will continue to be available.

To the extent that the proposed changes cannot be fully implemented immediately, the bill provides for the changes to be accomplished gradually.

Adoption of the proposed legislation will result in more meaningful access to justice for the people of Puerto Rico.

Respectfully submitted,

Richard R. Bostwick
Edward I. Cutler
W. Gibson Harris
Hon. Shirley M. Hufstedler
Johnny Hulan Killian
Hon. Harry Phillips
Hon. H. Barefoot Sanders
James A. Urban
Benjamin L. Zelenko, Chairman

February, 1980

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